WHEN RENEWAL REPEATS: THINKING AGAINST THE BOX

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I. INTRODUCTION

I should start by thanking the board of editors for inviting me to contribute an essay to the journal's "millennium issue." The editors seek "new thinking" and ask "what international legal issues will consume your legal career and shape the parameters of international law in the new millennium?" At forty-five it is flattering to be solicited as a "young" voice with "new" views, although in developing my reply I have wondered if the editors share my ambivalence about calling for new voices and fresh perspectives. There is something energetic, optimistic, and open-minded in their call that really is exciting, and I am pleased to have been asked to participate. At the same time, it is hard to escape what seems an iron law of disciplinary renewal, routinizing this sort of energy, absorbing its critical potential into a familiar disciplinary common sense. The discipline of international law today is cheek by jowl with people calling for new thinking and renewal, even as they offer up the most shopworn ideas and initiatives. The occasion invites thought about the role of novelty and innovation in the field—what is it, how does it happen, how should it be valued?

As a teacher, I know I often have mixed motives in calling for "new thinking." There is a good faith pedagogic intent to help students trust their own creative and critical impulse, to be confident enough to speak differently. There is my own mixed attitude toward the field—a conviction that we need new thinking to survive and a simultaneous hope that innovation will sweep the field away. A call for innovation can have a disciplining aspect, the sadistic pleasure of challenging students to innovate, calling the bluff in their resistance to established wisdom. I suppose there is also an element of voyeur-
ism and a desire to be entertained, a hope to be associated with the cutting edge, wherever it turns out to be. It may sound like a cop out, but I would be interested in the editors' response to their own initiative; in my experience students are often far closer to the next wave than older colleagues, and I have gotten a lot by picking up on the threads of their interests.

I can only imagine that there must be a similar range of motives when the tables are, in effect, turned. There is something odd in a student editorial board asking people half again to twice their age what issues we think will become relevant in our careers—as if we were just starting out and they were situated too far along to be able to see that far forward. I suspect the editors hope both to serve the field and to establish or mark their professional affiliations. I imagine the editors experience themselves, at least on some days, to be quite firmly within the established field, the board of a well-respected journal, having the courage to reach out, encourage the new and the young. There is an earnest element in the solicitation, based perhaps on fealty to the project of international law, a desire to help the field by serving as midwife to its renewal, or to lead a new generation by selecting from among the renewal projects offered by scholars a bit further along. Among those most strongly identified with the discipline's mission and practice, this sort of renewal impulse can also emerge from a frustration that everyone calls for new ideas but no one provides them. There are few risk-taking pleasures here—renewal is an urgent task for the discipline itself. If international law wants to remain ahead of the curve in a changing world, the discipline will have to change even faster, and the board can help. The only real risk is putting one's money on the wrong horse, but that can be avoided through systematic pluralism—call forth the most incompatible array of "renewals," each with the most established pedigree possible.

At the same time, I expect the editors have more critical impulses as well, perhaps a crazy desire just to see what will happen if they stop accepting some percentage of manuscripts over the transom which will "interest our readers" and ask people to innovate—like rewarding dolphins who think up new tricks. Impulses like this are less wedded to the discipline's own project and practice and are open to the idea that international law might itself have been a wrong track after all.
This can be an uneasy impulse—anxious about the status of the
discipline, uncertain about future directions, skeptical
about moving too quickly to a new disciplinary consensus.
Here there is a bit of the thrill of risk taking, even if it is a
pretty safe risk by now—many journals have had symposia on
"new ideas" in international law and even the American Society
of International Law embraced the trend as the theme for
its last annual meeting. But there remains the faint danger
and excitement of disaffiliation with the discipline, of going
too far afield, of letting down the guard of one's pluralism in a
moment of enthusiasm, the fantasy of a pied piper who really
would lead one out of the valley of professional common
sense.

In my response, I foreground the relationship between
motives such as these and the discipline's practices of renewal.
The first part of my essay focuses on the professional vocabu-
larv that international lawyers use to argue for and against re-
forms of various kinds, the terms within which new thinking
emerges. I present international law as a series of professional
performances rather than as an edifice of ideas, doctrines, and
institutions, recasting the discipline's intellectual tools as a lex-
icon for argument about reform and disciplinary renewal, as
well as for professional affiliation and disaffiliation. For inter-
national lawyers, the performances of renewal, criticism, and
reform are central to professional identity and competence,
and for more than a century, these lawyers have shared an ar-
gumentative terrain which can be analyzed using the tools of
structural or semiotic analysis that have now been applied to
the doctrinal terminology of various other legal fields.1

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1. The structural analysis of doctrinal arguments that have most influ-
enced this project have been those of Duncan Kennedy and Martti Kosken-
niemi. See Duncan Kennedy, Form and Substance in Private Law Adjudication,
89 Harv. L. Rev. 1685 (1976); David Kennedy, The Structure of Blackstone's
Commentaries, 28 Buff. L. Rev. 205 (1979); Duncan Kennedy, A Semiotics of
Legal Argument, 42 Syracuse L. Rev. 75 (1991) [hereinafter A Semiotics of
Legal Argument]; Martti Koskenniemi, FROM ApOLoGY TO UToPIA: THE
STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (1989) [hereinafter FROM
Apology TO Utopia]. Duncan Kennedy summarizes and cites other efforts
of this type in A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE) 247-63 (1997).
I have worked on the structural vocabulary of international law before, most
comprehensively in David Kennedy, INTERNATIONAL LEGAL STRUCTURES
(1986) [hereinafter INTERNATIONAL LEGAL STRUCTURES].

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Mapping the professional vocabulary shared by international lawyers, itself transformed as lawyers renew the field or reform the structures of international governance, places efforts to generate “new thinking” in the context of broader disciplinary transformations and continuities. It does not explain how a certain set of ideas, a particular arrangement of this professional vocabulary, comes to dominate the field in a particular place at a particular time—nor does it explain how one or another argument common in the discipline for more than a century will in a given moment be experienced as novel and at another as passé. The second part of the essay explores the struggles through which transformations in the disciplinary vocabulary are generated, and through which one or another set of ideas comes to be dominant at a particular moment. I argue that our conventional pictures of this process—as a struggle of individuals in a marketplace of ideas, as pragmatic responses to a shifting problem set—are off the mark. Disciplinary renewal—no less than disciplinary stasis—can best be understood as a complex interaction among groups of individuals pursuing intellectual, political, and personal projects. Relations among these efforts over time can better be grasped in the vocabularies of power, commitment, and identity than in the vocabularies of merit or pragmatic functionalism.  

2. Analysis of legal disciplines in these terms is less common than structural or semiotic analysis of their argumentative terrain. I have been particularly influenced by the work of David Trubek, Yves Dezalay, and Bryant Garth. See David M. Trubek et al., Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas, 44 Case W. Res. L. Rev. 407 (1994); Bryant Garth, From Civil Litigation to Private Justice: Legal Practice at War with the Profession and its Values, 59 Brook. L. Rev. 931 (1993); Yves Dezalay & Bryant Garth, Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order (1996). My sense, however, is that there are numerous scholars now working to import ideas from the tradition of sociological inquiry which has foregrounded these elements. Particularly influential for me were Pierre Bourdieu and Michel Foucault. See, e.g., Pierre Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, 38 Hastings L.J. 814 (Richard Terdiman trans.) (1987); Michel Foucault, Power/Knowledge: Selected Interviews and Other Writings, 1972-1977 (1979) and Discipline and Punish: The Birth of the Prison (1979). See also Duncan Kennedy, The Stakes of Law, or Hale and Foucault, in Sex and Dressing, etc.: Essays on the Power and Politics of Cultural Identity 1-33 (1995) [hereinafter Hale and Foucault]. I have worked on the sociology of the field before in David Kennedy, The Move to Institutions, 8 Cardozo L. Rev. 841 (1987); David
velop this idea by looking at the efforts of my colleagues in the United States, who have worked in a post-Cold War period of great uncertainty, to propose a new arrangement of the conventional professional vocabulary under the rubrics of "transnationalism" or "liberalism" as a recipe for renewal of the discipline as a whole.

In the third and last part of the essay, I answer the editors' question most directly, by looking at some of my own experiences calling for new thinking in the field. Since entering the field in the mid-1970s, I have tried to identify and encourage a more critical and open-ended rethinking of the profession and of international society than has generally been possible across a century of insistent calls for critique and renewal. In that, I share the editors' ambition, at least in its more critical and uneasy form, to focus attention on the possibility for reappraisal of the field which risks disaffiliation with it. I expect this is the path along which I will continue my career, and that the issues the editors raise here will continue to preoccupy me without clear resolution.

I was tempted to frame my broad response more overtly as a performance, perhaps as an extended letter to the editors about their desire for "new" ideas. Although I abandoned that trope, I still think of it that way, as a performance for an audience. I play a middle-aged international legal scholar, surrounded by a chorus of colleagues offering new thinking for a new world, playing for an audience of students at once eager and skeptical. My character has made calls for "new approaches" to the field something of a métier, but realizes that, if that goes on too long, he may well drift into the disciplinary limbo reserved for *enfants terribles* who never figure out how to become *éminences grises*. Here he goes again, nevertheless, responding to another call for new thinking. He is baffled by the narrow range of innovation generated in a discipline obsessed with the need for criticism and reform, frustrated by the blindness and bias in the discipline's stock of intellectual char-

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acters and modes of professional performance. Although his story illustrates the dead ends and difficulties of innovation in the international legal profession, he nevertheless plays the part committed to the promise of its possibility.

II. INTERNATIONAL LAW: A DISCIPLINARY VOCABULARY FOR CRITICISM AND REFORM

A. And You Will Know Them by Their Vocabulary: Defining a Professional Field

Projects of criticism and reform in a professional field arise in the context of an ongoing disciplinary practice. We might define the field as people sharing professional tools and expertise, as well as a sensibility, viewpoint, and mission. They launch projects of criticism and reform within, and against, this professional vocabulary. For the past hundred and more years, the modes of both criticism and reform have remained remarkably stable in international law. There have been ups and downs in the relationship between critical and renewalist intellectual styles, but an international lawyer from 1875 could converse easily with one from 1995. They might well agree both where the field had theretofore failed and what steps were necessary to get things back on the right track. It is partly in this sense that we can speak of a disciplinary identity.

One might quibble about the dates (there would surely be precursors and lags), but the broadly liberal and internationalist, or cosmopolitan, discipline we know today has developed in broad waves of critical anxiety and enthusiastic reform. The last half of the nineteenth century saw a self-confident period of invention and renewal of what was then thought to have been a long-established tradition. This period lasted from roughly 1871, through the Hague conferences of the late 1890s until the First World War, and consolidated much of what we now think of as “new thinking” about international law. The Great War was followed by a period of confusion,

3. See generally A New World Order: Yesterday, Today and Tomorrow, supra note 2.
4. My thinking about this period relies on Martti Koskenniemi’s terrific work documenting a “Victorian” sensibility about international law which is surprisingly contemporary—not at all the formalist or positivist artifice the field has come to remember of the pre-1914 era. See From Apology to Utopia, supra note 1, at 191-34. See also Martti Koskenniemi, Lauterpacht: The

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anxiety, rethinking, and disputation, which lasted from 1914 through the mid-1920s. And then, until the outbreak of the Second World War, we find a second period of renewal and consolidation, reaffirming many of the eclectic, interdisciplinary, and often idiosyncratic gestures we still think might lead us from our current disciplinary confusion and malaise. The outbreak of war in 1939 initiated another period of confusion and anxiety, invention, and disputation, which persisted through the early Cold War years. After about 1960, the field


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entered a third period of self-confident renewal, consolidating an updated, pragmatic, and liberal internationalism. This post-1960 consolidation repeated much from the periods 1870-1914 and 1920-1939, and lasted until the end of the Cold War. We are now midway through another period of confusion, anxiety, and rethinking. The leading members of the discipline call out for consolidation and renewal, offering methodological commitments which they hope will take us back to the self-confidence of the discipline’s best years. In many ways, the 1990s ended like the 1860s, the 1910s, and the 1950s.9

To unpack this story of disciplinary renewal and consolidation punctuated by periods of anxiety and disputation, we need a vocabulary for thinking about coherence and discontinuity in a professional discipline. Again, it will certainly turn out that matters will be more complex than this rough periodization suggests—there will be anxious critics in periods of renewal and self-confident reformers in the most anxious times. Individual lawyers will blend these attitudes differently at different times. Still, the field has had a mainstream voice that is now confident, now anxious. To trace more precisely the vocabulary with which different voices in the field are spoken—what counts as renewal and what as critique—we need a map of the field’s professional preoccupations and intellectual vocabulary. But how does one produce a “map” of a field,
when most existing disciplinary maps ("everyone in the field has had a formal image of the state, but under current conditions, we need a more functional approach") are themselves performances of critique and renewal?

It is conventional to define international law by reference to its object: international law is the law which governs relations between states. Wherever two people are gathered in its name, there is the field. There is much to be said for this—if we know what international law is, presumably some set of doctrines, cases, institutions, etc., then we will be able to treat anyone with any professional responsibility for, or connection to, this corpus of material as "in the field." New thinking will mean anything these people come up with which alters this corpus. I think it is unavoidable to rely on some set of boundaries rooted in a world of materials when setting about to understand the intellectual history, or the prospect for renewal, of a "discipline" or "field."

But there are also drawbacks. A great deal of what international lawyers do is polemicise for the existence, power, and usefulness of "international law." As people in the field have built, defended, and promoted this thing they call international law, the conventional definition has been a focal point for dispute and renewal. Although international lawyers will routinely say that "international law is the law governing relations between states," they are also likely to think this is a "traditional," or "classic," definition that has been, or needs to be, reformed in various ways. Indeed, from the moment this definition was consolidated in the late-nineteenth century, it has coexisted with modes of criticism and renewal that draw it sharply into question. Many would rather define the field by its function (e.g., promoting world peace or providing a process for international policymaking and dispute resolution) than by its legal materials. After more than a century of renewal, almost every basic doctrinal proposition is now conceived in at least two voices—a voice of stability, associated vaguely with the past, and an updated, or reforming, vision which is more complex, relevant, and up-to-date. Maybe it is not just states, maybe it is not law ("in that sense"), maybe it does not govern, maybe the definition should start elsewhere, and so forth. Far from threatening the coherence of the field, "new thinking" of this sort has been right at the core from the start.
We are exploring a field with a double consciousness about its own materials. There are rules and exceptions, classic positions and new thinking, formal definitions and pragmatic solutions. The discipline is both tenaciously attached to the classic definition of international law as “law among sovereign states” and full of denunciations of international law’s fetish-like attachment to states and to “sovereignty.” These two attitudes are brought together by the expertise, the integrity, the judgment, and the professional voice of the international lawyer. When an international lawyer carries on a real or fantasy discussion with an interlocutor elsewhere in the establishment, he or she will sometimes need to emphasize international law’s commitment to sovereignty, just as he or she should sometimes frame international law as a harbinger of an international community which has left sovereignty far behind. When international lawyers address one another, we repeatedly find polemics castigating the field for having stayed too long with the classic definition, just as we find insistence that moving away from sovereignty would, perhaps unfortunately, be premature.

To understand how this professional voice and viewpoint is motivated and sustained—at once enthusiastic about reform and savvy in managing the balance of tradition and innovation—we will do better to think of the field as a group of people situated in a professional community over time, who share projects and commitments, a common ethos, a practice, and even a character. Across a long period, we find lawyers who think of themselves as internationalists, who relate to one another as part of a discipline or profession, who share points of reference, professional tools, and technical knowledge. To appreciate their mental map, we should treat their pronouncements about the tradition they criticize and the future they urge into being almost as symptoms of their professional character. The goal is to generate a plausible human account, a story with which we can empathize, about how people could have generated this set of ambivalent attachments to the field’s central propositions.

I imagine international lawyers identifying and working on “problems” against what they imagine as a backdrop of social and political “context.” Their work is to develop and defend particular doctrinal or institutional arrangements as both good solutions to particular problems and as progress for in-
ternational law itself. They use available bits of expertise and argument, and express, sometimes directly and sometimes indirectly, what we can interpret as a continuous disciplinary character or style. There will be disputes about the institutional form international law should take, just as there may be disputes about the collective sense of mission or common objective, both for the discipline and for society.

As they do this work, international lawyers generate criticisms, as well as proposals for reform. Each international lawyer deploys criticisms to clear the ground for proposals. The criticisms may be aimed at particular proposals or at the broader field, just as a proposal can be cast as a narrow pragmatic response to a particular problem or as a first step in a broader renewal of the field. As the work proceeds, relatively stylized modes of criticism and reform emerge which express a consensus in the discipline about where the field has been and where it should be going. These common points might be limitations on the disciplinary imagination (no one thinks much about economics), but they might also be collective disciplinary knowledge about what works and what does not. The disciplinary consensus might well reflect an ongoing or unresolved ambivalence or debate, but it might also reflect a mode of appropriate management for recurring ambivalent impulses. In such a field, it will be extremely hard to tell what counts as "new thinking" or "critical energy" in any straightforward way. Quite bland pronouncements might fall far from the discipline's center of gravity at one point, while dramatic critical gestures might be quite close to it at another.

Over the life of a discipline, common interpretive formulas, or traditions, emerge—these can remain stable for a long time, or they can unravel. International lawyers might come to share a view of how the world is—states suspiciously eyeing one another and irrational statesmen defending formal prerogatives—or of how it should be—perhaps calm, cooperative, and post-sovereign. They might come to see their mission as being "realistic" about what is in order to help us get to where we ought to be. If so, they might maintain an attachment to sovereignty or statehood as a concession to what is, while repeatedly attacking sovereignty in the name of what ought to be. By doing so, they might come to feel they have a common professional voice somewhat out front of what is, looking down and back on a political elite wedded to outmoded forms.
Some people have made much of the cosmopolitan community of international lawyers and have felt a strong affinity for others in the profession across national differences, and even across time, while others are quite convinced that there is no such thing as a "discipline," common project, or vocabulary. There are simply lawyers working to solve problems as they come along in lots of different specific contexts and doctrinal areas.

Just as international lawyers may come to share a view of their context, and of themselves, as they do this work, they may also generate a set of common ideas about what the "problems" are to which their skills and tools are appropriate. I have always found it striking that so many international law texts are organized around a series of humanitarian objectives: environmental protection, antiterrorism, human rights, and arms control. It is rare to find an international lawyer who foregrounds what his field has to offer the statesman who wants to degrade the environment or prepare for war, although surely these are also "problems" the field does much to address.

Our role here is important. Looking back at their intellectual output, listening to their work on one thing after another, we see a coherence, an identity, and a style. In some way, international lawyers create in us the sense of their being a community, or, perhaps better, their community is our interpretive act. They create the effect of their coherence, their consensus, and their good judgment just as they create a sense for who is central and who is at the margin of their world. In establishing this sense, the field’s self-definition provides only a limited starting point, since many of the things people in the field say about their discipline are best understood as polemical backdrops for their own renewal programs.

In this light, we might reread the classic disciplinary definition ("international law is [and is not] the law which governs relations among states") less as a description of a fact than as the outline of a common professional vision. International lawyers across the century have been people who look out at the world and see that there are states, and, among them, there is law. At the same time, they share a worry that where there are states, it is hard to have law. Since relations among states "are" political, and law "is" a national creation of the sovereign, it is difficult to build an international law. They ex-
perience this worry as both a philosophical problem to solve (how can there be law among sovereigns) and as a practical challenge (what should we do next to strengthen law among states).

Either way, the discipline has an uphill battle. One might either redesign law to work among sovereigns, or one could soften sovereignty to permit more law, or both. One might grow the law and shrink politics by getting rid of the state, or by having a super-state; by merging law with the regularities of international politics, or by building a thicker net of legal norms and institutions among states. The starting point and limits on the endeavor remain the same. The field is held together by a professional problem: managing relations between states and law. This common project suggests two central boundaries for the discipline's professional identity. International lawyers are people who work to build something which can be, or become, law rather than politics, and can be, or become, international rather than national law. If it is all law, it stops being international. If it is all states, it stops being law.

There is also a mission and commitment here. This confection, this law-and-not-politics, this between-but-not-within-states, is a good thing, and there should be more of it. Things would simply be better if there were more law between states. When international lawyers look at the world it is self-evident that we have plenty of politics but only very little law. They are not surprised to be marginal to power—that proves the urgency and drama of the task, to reorient governance so that the stark desert of politics can bloom with the flowers of law, reason, and order. The idea that we have plenty of law, a kudzu of procedures and norms beneath which only the most tenuous political culture can survive, is simply not on the table.10 And, there is a direction. However difficult the project will be, international lawyers share an orientation to a past of sovereign states and a future of international law. The discipline looks forward, confident that we will arrive in the future with history at our side.

10. It has been Philip Allott who has most determinedly sought to reverse this disciplinary common sense. See Philip Allott, Eunomia: New Order for a New World (1990).
If we use this broad sensibility to define the field, we will need to leave out many people working in private practice on international commercial matters, as well as many people in the academic fields of political science, business management, or anthropology, all of whom seem to be working with a rather different professional history, spirit, and project. They do not look out at the world and see states and law; they see a market, or a world of cultures or contending political forces, ideologies, and choices. The professional identity or voice which they embody feels different. Within the academy, the sensibility, professional projects, and preoccupations of international lawyers differ from those of people in the neighboring fields of comparative law, international economic law, and international business transactions. It might be a good idea, might even renew the field, to talk more with people across these divides and learn from what we come to see as their sensibility, but that is a different issue, itself a recipe for renewal. It turns out that a great deal of what international lawyers yearn for in other fields has little to do with what is to be found there and much to do with their sense of international law's shortcomings and proper direction. To map the field they seek to renew, we start with people and their broad mission, commitments, and voice. Now, we need a sense of the domains of their intellectual work.

B. Domains of Work: Building International Law

Whether in practice or the academy, whether working on particular legal issues or generating broad new proposals for the field as a whole, the work international lawyers do is in large part the generation of arguments for reforms. We are used to thinking that the “dispute,” which is argued and eventually adjudicated makes the court the central site for work by domestic lawyers. Of course, disputes of this sort do happen in international law and are sometimes adjudicated. But the institutional setting for international law is less that of a court than a permanent standing constitutional convention, working to inaugurate a new legal and political order. Specific problems and disputes are debated as opportunities to develop the system. International lawyers do appear as advocates before courts disposing of stakes (who gets this territory, who pays this bill), but only rarely. More often, and even in adjudi-
culation, international lawyers appear as advisors from a higher plane, offering advice about systemic interests. The instances for generation of work by international lawyers are less often disputes than reform projects. The call for and promise of new thinking is, in this sense, the central activity of the profession.

It is not surprising that as international lawyers have worked to build a legal system outside the state, they have pursued issues which parallel the traditional forms of domestic law: legislation, administration, and adjudication. Their efforts to do this might be arranged on a spectrum from direct efforts to reproduce domestic legal forms and institutions among states, to more indirect efforts either to build looser "functional equivalents" for domestic legal institutions or to reinterpret the conditions of statecraft as a more "primitive" version of national law. We might place these two types of reform effort on a spectrum.

![Building International Law Diagram]

International lawyers have proposed a large number of different techniques to build international law across this spectrum. Some examples would include:

1. *Legislation.*

Here we find work on "sources of law," on the best modes of legislation or codification, on the relative merit of treaty and custom, or of rules and principles, and on the relationship between norm generation and enforcement. There has been work which is both theoretical (how can one generate a norm external to the sovereign) and practical (how should we increase the number and improve the effectiveness of norms). Institutionally speaking, we find interest in the role of various plenary bodies, modes of voting, the power of international organs to bind members, and so forth. The spectrum would run from efforts to establish an international legislature with
binding powers, or to codify an international common law, through to softer efforts to expand the domain of stable inter-sovereign expectations and habits which "function" as norms.

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<td>Plenary with political authority</td>
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2. Administration.

International lawyers (often in more or less strained partnership with the fields of "international institutions" and political science) have worked on the constitutional structure for international bureaucracy, on forms of leadership, and on the construction, reform, coordination, and control of an international civil service. The enforcement arm for international law might also be either a formal equivalent of the domestic state or a more primitive and decentralized functional equivalent based on the mobilization of shame and political pressure within the "international community."

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3. Adjudication.

We find work structuring an international adjudicative process—for example, rules about jurisdiction and the enforcement of decisions. International lawyers speculate about what law might offer to the peaceful settlement of disputes or about

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the relative merits of adjudication, arbitration, conciliation, and other dispute settlement formats. There has also been extensive work on broader procedural rules—the prerogatives and limits of sovereignty, the international role of domestic legal acts—and concern about how to resolve conflicts among domestic norms and about the appropriate role for domestic court systems in the international normative order.

As international lawyers elaborate a legal system to function outside of and between states, they also differ about the emphasis that should be placed on each of these areas. For some, the key is norm generation and enforcement, for others institution building, and for others dispute settlement. Across the last century, the discipline’s overall emphasis has repeatedly shifted among these areas. During the inter-war period, the most innovative work was done in the domain of legislation—both establishing the League of Nations’ plenary and working on normative codification. After the Second World War, we find far more innovative energy building the administrative empire of the United Nations and specialized agencies. The last twenty or thirty years have seen the emphasis shift back to dispute resolution and adjudication—precisely where it was in the period before the First World War.

In different eras, moreover, the field has identified these broad legal functions with different institutional, doctrinal, and methodological forms. In thinking about norms, in some periods the focus has been on rule codification by professionals, in others on multilateral treaty making, in others on the elaboration of broad consensual principles based in more popular consensus. If adjudication before the Second World War seemed a relatively formal and centralized thing, today the rage is all decentralized dispute resolution across a smorgasbord of different methods, some more and some less politically engaged.
Within each domain, some choices reappear across the period. Are international norms best built by custom or treaty? International lawyers have worried about this for at least a century, one or the other mode coming in and out of fashion at various points. Should only the most firmly followed norms be thought law, or should the field be open to one or another type of “soft” law? Are international organizations more or less than the sum of their members? How independent should international civil servants be of member governments? Should international law rely on courts or other, less formal, modes of dispute resolution? The field develops by changing the emphasis it places on one or another side in these debates.

Although such choices are often presented as intensely pragmatic matters—an institution should use whatever type of norm will work best, will suit the task at hand—looking back, it is striking how one or another solution comes in and out of fashion for the field as a whole, irrespective of the issue involved. For a time, everyone is making norms with multilateral treaties; then, no one is. For a time, the field struggles to codify rights; then, international lawyers in one domain after another prefer working with principles. For a time, international institutions are emphasizing their autonomy, personality, and discretion; then, across dozens of different issue areas, they adopt a more clerk-like posture. At one point, global problems of interest to the field had their own specialized agency, and people spoke seriously about “world government” and “world public order.” As these went out of favor, every issue spawned an array of nongovernmental organizations, and the words “civil society” swept the discipline. Such broad changes may certainly reflect changing political conditions. But these, in turn, are also affected by what experts, across an array of issues, think most likely to renew the internationalist cause.

The terms employed to debate these issues are surprisingly consistent across the last century, and the pattern in these debates is also at odds with the idea that the choices are either pragmatic (what will work best in this context) or responsive to immediate historical developments (what will best catch this historical wave). Repeatedly, a focus on norms rather than on institutions, on rules rather than principles, on treaties rather than custom, on the authority of member states
rather than institutions, and on adjudication rather than other dispute resolution techniques, have all been defended in similar terms. To defend choices in the left-hand columns, international lawyers stress the importance of sovereignty, at least as a current reality, as well as the need to root international law firmly in the consent of sovereigns and the importance of establishing an international law distinct from political calculation. In defending choices in the right-hand columns, international lawyers stress the desirability of indirectly sneaking up on sovereignty. An international law more embedded in its political context, in this view, will both be more likely to dislodge sovereignty, and more adequately express the will of the current and future “international community.”

When international lawyers have disagreed about the appropriate emphasis among legislation, administration, and adjudication, they also have generally cast their arguments in these terms. It is easy to see norm-building as an appropriate first step to build an autonomous law among sovereign states and to see international administrative bodies as coming a bit later, when the international community is mature enough to handle policymaking institutions which are less rigorous in their respect for sovereign autonomy. So, for example, it might seem that focusing on norm-building will ensure the autonomy of international law, developing a canon of rules that can be preserved until society is ready to accept them, while institution-building will enmesh the field in the politics of the day.

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Choosing Among Different Strategies for Building International Law

Legislation
- treaty
- custom

Administration
- civil service
- civil society

Even at this broad level, the story is a more complex one. Since those interested in both legislation and administration have developed methods for norm-building across the entire spectrum, from treaty to custom, from formal norms to informal principles, from autonomous institutions to disaggregated regimes, from civil service to civil society, it is possible to characterize a broad preference for legislation or administration in either way. Compared to the U.N. collective security apparatus, an effort to build reliance on stable (if non-binding) expectations among sovereigns can seem a very indirect strategy for international law, just as codification can seem rather more direct (and binding) than institutional efforts to build policy by consensus. Building norms through custom can seem a more porous affair than defending the legal autonomy of a distinct international civil service. The interesting thing is that the arguments for these broad categories of reform are, nonetheless, carried on in terms quite similar to those used to differentiate concrete choices among particular jurisdictional rules or approaches to codification.

C. Arguing About Reform Projects in Terms of the Discipline's Appropriate Boundaries

People often debate the desirability of particular reform proposals by arguing about the appropriate boundaries for the discipline. When international lawyers confront choices among adjudication, legislation, and administration, or between modes for developing international law's capacity within these domains, the choice often seems to implicate the boundary between international law and a wide range of other disciplines and social spheres.

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1. Politics

How autonomous should international law be from politics? Is it stronger when it embraces or shuns the political? And what would it mean to draw near to politics, to reflect more formally the will of states, to reflect more flexibly political developments? What does the discipline of “political science” have to do with this set of choices? How about the field of “international institutions”? Is politics a raw historical force or an alternative management expertise? The most basic mode of arguing for or against a given institutional or doctrinal possibility, whether macro (“norm-building or administration”) or micro (“should uti posseditis trump self-determination in this case”) is to cast the alternatives as bringing law closer to, or further from, politics and then treating the question as implicating the appropriate boundaries of the field. At this level, the arguments for and against a more political international law are intensely familiar and easily presented as a story about progress. Either international law has been too far from politics and must move closer to become effective, or it has become dangerously intermingled with politics and must assert its autonomy to remain potent.

Specific choices among doctrines can be easily cast in these terms. “Soft law” will “politicize” international law, or will permit it the flexibility to reconnect with social movements and political forces. Codifying norms on the basis of custom might express international law’s historic wisdom, while an international law that relies on multilateral treaties will be too easily manipulated or limited by today’s political majority. Perhaps the reverse—custom might be the place for recognizing the power of political forces while treaty law preserves the autonomy and distinctiveness of international law. It might seem that favoring an international law of hard rules will preserve its roots in the consent of states, while softer norms will pull international law into the realm of utopian speculation. Or the reverse—rules might lock in international law’s distance from the changing political context. The machinery of national courts or customary rules may seem better able to embrace the politics of a disaggregated international community than multilateral institutions, courts, and treaties, all of which are too formal and fixated on sovereign autonomy. If multilateral treaties seem promising because they will yield a more formal
set of rules, or will sharply differentiate international law from politics, it is against the backdrop of a customary norm-generating process that can be chastised for its informality and difficulty separating legal obligations from political habits. If the soft law of principles and custom seems to promise more opportunities for flexibly reflecting the broad international community, or for embracing new states and non-state actors, it is against the background of a treaty system that seems rigidly formal, limiting normative development to the lowest common denominator of sovereign consent.

Pretty much any choice from the left-hand columns can be defended, relative to its partner on the right-hand side, by stressing the need to keep law pure of politics, just as any choice on the right-hand side can seem a vehicle for merging international law more firmly into the political context.

A very similar argumentative structure has developed around a series of boundary issues.

2. National Law

How closely should a public law external to states be modeled on national law? Should we be seeking to reproduce the functions of national public law, the forms of national private law, or both? Will international law be stronger if it is enmeshed in national legal systems, generated and enforced by national courts, or should it develop its own norms and institutions? How important is the universality of international law—should it become something different in different national systems? It might seem that strong international institutions can be built only by structuring them to respond to individual complaints, by having their decisions implemented by national courts, and by opening to the participation of myriad nongovernmental institutions, or this might seem to squander the entire project of a uniform law among states. Although it is now common to view the answers to these questions as matters of degree, they have also been thought to present a po-
labeled choice between two different ideas about the nature of international law: “monism” and “dualism.” Again, the left-hand choices seem to affirm a sharp boundary between national and international law; the right-hand choices embrace a certain degree of commingling.

Arguing About Relations With National Law

- International law separate from national law
  - "Dualism"
- Comingling of national and international law
  - "Monster"

3. Commerce

International law has seen itself as “public” law, about governing. But there is also a private international legal order, often deeply enmeshed in national law. We find a great deal of work on the “public” nature of international law and on the field’s relations with the worlds of economics, the market, mercantilism, and trade policy. In some periods, the domains are thought obviously distinct; in others, they are thought more interconnected. Is international economic law a specialized regulatory department within international law, or does it offer an alternative sensibility and legal culture altogether? Should the international law of the future model itself on the World Trade Organization, or should it shun the competition? Left-hand column arguments provide a sharply differentiated public and private law, while those on the right provide a flexible governance partnership with economic law and institutions.

Arguing About International Law and Commerce

- Sharply differentiated international public and private law
  - Limits of private law analogy
  - International economic law a subordinate regulatory field
- Public and private law as partners in international governance
  - Private law more than analogy
  - International economic law an alternative mode of international governance

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4. Nationalism

For at least one-hundred years, nationalism has seemed the spiritual opposite of international law's cosmopolitanism, a state-sized stand-in for all that international law is not: passion to its reason, history to its future, parochial in the face of its worldly wisdom. But relations with nationalism have been far more complex than this simple distinction would suggest. When nations do not fit neatly into states, where should international law stand: with the energies and commitments of national identity or the forms of statehood? Which will stand the field in better stead over the long term? Should international law promote minority rights or self-determination? Since the mid-nineteenth century, the field has been committed to the idea that there is only one international law, but what about differences in national and regional attitudes, institutions, and priorities? International lawyers have repeatedly struggled with the threat different national legal traditions and viewpoints pose to international law's universality. Can there be a law of civilized states? Of liberal states? A law of coexistence and of cooperation? Will international law be better off embracing or rejecting these distinctions? Choices in the left-hand column seem to affirm a single universal law and treat nationalism as something to be resolved within states, or if by international law, then as a clear exception. Institutions and doctrinal choices in the right-hand column ally with nationalist communities in treating the state as a more artificial and porous construct.

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5. The Periphery

International law has seen itself as the voice of civilization, of the center, of the modern, of the future, and of universal humanism and progress against, or in dialog with, the voices of the non-Christian world, the primitive, underdeveloped, non-Western, outlaw world of those who do not yet see things from a high place. How should international law best defend the civilized or cosmopolitan world against this periphery? Is international law a proselytizing faith? At decolonization, which aspects of international law were open to contestation? What must new states accept as the price of participation? Are the procedures fixed and the substantive norms open? Or, where norms are deduced from the nature of sovereignty and procedures developed by sovereign consent, do we find the process flexible, the normative structure largely static? Which is better for international law and which for the new states, or do their interests align? How important is the civilizing mission, humanitarian intervention, development, modernization? And, what about the outlaw, the terrorist, the pirate, the war criminal, and the insurgent army? Do their behaviors, their consents, affect the content of the norms? How are they best held at bay? Again, on the left, there is a universal law in which all states may participate as formal equals; on the right, there is an international law more

comfortable with regional differences and less worried about formal equality.

Arguing About the Role of the Periphery

<table>
<thead>
<tr>
<th>Universal humanism</th>
<th>Local / regional cultures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assimilation</td>
<td>Normative flexibility</td>
</tr>
<tr>
<td>Encourage participation</td>
<td>Substantive engagement</td>
</tr>
<tr>
<td>Formal equality</td>
<td>Affirmative action</td>
</tr>
<tr>
<td>Terrorist as outlaw</td>
<td>Terrorist as citizen</td>
</tr>
<tr>
<td>On/Off approach to insurgents</td>
<td>Functional engagement of insurgents</td>
</tr>
</tbody>
</table>

6. The Base

At one level, international law is not concerned with real people; it is perhaps concerned with real problems, but its agents, subjects, and objects are "states." Still, in pursuing this disciplinary identity, the field has been perennially enmeshed in relations with social movements of various sorts: the peace movement, the women's movement, the environmental movement, the human rights movement, the labor movement, and the indigenous peoples' movement. In every period, there have been efforts to reach out and touch the base, perhaps reflecting the field's self-image as a particularly humane and progressive part of the global establishment. But how far should this go? Would international law profit from the withering away of the state? From the emergence of a transnational civil society? Would it be strengthened or weakened by alliance with the base? On the left column, there is an international law for which the base is generally mediated by the state; on the right column, there is an international law which relies on the active engagement of civil society.

7. Ideology / Religion

International law patrols its boundaries with the domains of values, religion, or ideology much as it does the boundary with "politics." Although widely understood to have its roots in religion, just as it has its feet on the ground in politics, the field continually struggles to demonstrate that it is a secular and rational affair. Nevertheless, people in the field differ widely in how exactly the field might embrace humanitarian values while remaining distinct from ideology or religion. Are there universal human values? Has mankind a single conscience which can be "shocked?" Can religious traditions be mined for enduring principles? Might religious institutions be part of a new international civil society?

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D. A General Vocabulary for Intellectual Debate Among International Lawyers

Since a wide variety of large and small choices are framed to present these boundary issues, it comes as no surprise that international lawyers have repeatedly reflected on them in theoretical terms, or that "schools of thought" have emerged with views on questions such as whether an autonomous international law should be thought strong or weak. So long as we imagine relations among sovereigns to embody the political, to be a Hobbesian nightmare world of non-stop struggle, how can there be law among sovereigns? What is the appropriate balance between affirming sovereign rights and encouraging the international community to express a voice of its own? Within a broad liberal and cosmopolitan consensus, some international lawyers have emphasized the importance of a relatively autonomous international law, while others think of international law more porously and have been more committed to interdisciplinary work of various sorts: embracing political science, economics, sociology, anthropology, and diplomatic history. There have been those more interested in recognizing sovereign prerogatives and those more interested in speaking of, and for, an international community. These differences reflect broad theoretical orientations rather than adherence to specific propositions about the nature of law or of the international system.

The best analogy I can think of is to the differences among mainstream Protestant denominations in American culture. Very few people could clearly state the doctrinal differences between Presbyterians and Methodists, for example, but most Protestants could arrange a large number of denominations on a loose continuum from "low" to "high": from Unitarians at the low end to Episcopalians at the high end. Most could also differentiate those within their own church on a high-low axis—there are high church Presbyterians and low church Episcopalians. Most would be able to frame a "high" and a "low" church position on a wide range of issues and would have some sense about where on that continuum they felt most comfortable. High and low churches would differ in the breadth of their understanding of idolatry, in the emphasis they placed on institutional mediation in worship, in their attention to mystery and charisma, in the importance given to
grace and works in thinking about salvation, and in the horizontal or vertical organization of the church.

Few could state with confidence the Presbyterian doctrine on idolatry, but most would imagine it to be near the "low" end of a spectrum, which would run from comfort with a large number of sacred rituals and objects to worry that even the worship of Christ might be idolatrous. Few could speak confidently about the Presbyterian position on the mystery of the Eucharist, but most would understand Presbyterianism to be less attentive to the mysterious and charismatic dimensions of the sacred than Episcopalianism. Although everyone thinks that both faith and charity are important, everyone would understand positions higher than their own to overemphasize the role of good works in salvation and positions lower than their own to overemphasize the randomness of grace and the unknowability of life after death. As a result, when Protestants from any two places on the spectrum (either within or between denominations) debate religious issues, they can generally find their way to a relative contrast of high and low arguments, even if both think that their own position on the broader spectrum to be a good middle ground. I suspect this sort of structure might prevail in other contemporary religious traditions as well, and it may be that in American political culture "liberal" and "conservative" affinities work similarly. Issues are repeatedly framed as evenly balanced between "high" and "low," or "liberal" and "conservative," even if most of the participants in the debate think they are sensibly centrist.

In arguing about the relations between international law and neighboring social spheres, and in proposing or opposing particular institutional forms, international lawyers return repeatedly to two basic axes of philosophical disputation, each with its own well developed vocabulary: the relationship law should seek to strike between an international community and sovereign autonomy and the most effective balance between a more and less formal law.

1. Sovereign Autonomy in an International Community

International lawyers differ about the context within which international law is to be built. Is it appropriate to see today's international society as a "community" or as a world of disaggregated sovereigns? Which view shows realism, which
faith? On which side does history stand? Moreover, should international law look like the society it would regulate, or should it express a higher possibility? What will international law look like when finally realized, and how will the society appear then? Debate about these general issues runs parallel to the doctrinal and institutional choices above. We could align the theoretical attitudes of international lawyers along a spectrum from sovereign autonomy to international community exactly as we did doctrinal and institutional choices.

No international lawyer is comfortable at the extreme ends of this continuum. If you thought the situation was and always would remain one of complete sovereign autonomy, it would be difficult to imagine a role for international law. If you thought the international community had fully eliminated the sovereign state, it would be difficult to understand how the law that remained could be seen as “international.” Being an international lawyer means seeking to bring autonomous sovereigns into community. Straying too far towards either extreme implicates boundary issues—too far toward sovereign autonomy and one may collapse the field into politics, too far toward a communal vision and the field may become a new ideology or religion, losing its claim to embody a rational pluralism. Almost any position on the spectrum can be cast as either hard-boiled realism or utopian speculation.

Back to the Protestant analogy, if you thought all forms of worship were idolatry, it would be easy to imagine life as a secular humanist, but difficult as a Protestant. If you were not in rebellion against an existing church that went too far towards idolatry, you would also not be Protestant. To be Protestant means to be working on the relationship between worship and idolatry, between an institutional church and the priesthood of all believers. However much one embraces mystery and ritual, all Protestants are working on a worship that could make present the sacred without whatever discomfort led one away
from Catholicism. It is easy to see how sectarianism arises and is reproduced in such a structure. Anyone, at any point on the spectrum, might come to think everyone “higher” had substituted institutions for grace, while everyone lower had lost his faith. It would only be a matter of time, however, before he too would be read in the same terms.

For many Protestants, moreover, the “high” and “low” ends of the spectrum are associated with progress. From the low end, the move ever lower can seem like progress, both historically (in the original move against Catholicism and now towards ever looser or lower institutional forms) and ethically, in which “high” is often defended as necessary to compensate for human weakness and “low” as an ideal perhaps not reachable in this life. From the high end, progress might seem the reverse: one is likely to stress progress from the initial fall into disparate sects towards church unity and Christian understanding. As in the more doctrinal debates, international lawyers generally share a sense that the left column may better represent the present, the right column the preferred future. Repeatedly, international lawyers have seen the job for international law as building a bridge between a past and present of sovereign autonomy on the one hand, and a present and future of international community on the other. There also has always been a counter-narrative, however. From late in the nineteenth century, international lawyers in a variety of places have stressed the centrality of the nation to international law’s project and seen movement to perfect the nation—in Italy, Germany, through extension of the national form and the principle of national equality to extra-European societies in Asia and elsewhere, through self-determination and eventually decolonization—as forward progress from the more integrated, if haphazard and hegemonic, international system of the past.

2. A More and Less Formal International Law

In building that bridge, the character of international law itself has always seemed crucial: how autonomous from politics, how rule-based, what role for “policy”? Attitudes about these matters are familiar from other legal disciplines, and we can recognize two different types of international lawyers, as well as two broad attitudes towards law. There are those who

...
think international law should be relatively more rule-like, more autonomous, more clearly rooted in consent, and more mechanical in its operation, and there are those who think it should be more a matter of principles, more enmeshed in political or social context, less uptight about identifying its roots in consent, and more a matter of judgment or expertise than mechanics.

This broad difference can be used to frame arguments about particular doctrinal issues. For example, those who favor treaties might criticize custom for its formal rigidity, its roots in the past, its inability to reflect the range of new voices in the community, or its fuzziness and tendency to collapse law into politics. And those who favor custom criticize treaties for their formalism and inability to get beyond the current political consensus to express broader community values. Again, these can be aligned along a spectrum parallel to those that organized debate about doctrinal and institutional issues.

![Second Primary Spectrum](image)

The terms thought to convey this difference may differ over time, of course. At some points, the difference seemed well captured by the choice between rules, whether codified by treaty, custom, “general principles of law,” or the new category of “soft law.” At a later moment, after inquiry into the “sources of law” no longer seemed so foundational, the entire effort to generate norms—including both rules and principles—seemed to epitomize the left column, while international lawyers drawn to a less formal international law focused more on matters of policy, asking what arrangement fulfilled a desired political or institutional “function” best, rather than what arrangement was normatively persuasive. This sort of transfor-
mation has been common in international law across the century. We might mark this sort of change as follows.

Second Primary Spectrum Revisited

Stage One

Formal
Rules: Custom / Treaty

Antiformal
Principles / Soft Law

Stage Two

Formal
Norms: Rules / Principles
Hard / Soft

Antiformal
Policy: Functionalism
Pragmatism
Results for World Order

This sort of transformation is possible because the terms that illustrate the spectrum are capable of being interpreted to lie in various places along it relative to one another. Principles do seem informal when compared to treaty codifications but formal when compared to policy analysis. Even treaties, of course, can seem less formal than more functional considerations when treaties remain expressions of general directions or embody agreements to disagree, while more ad hoc arrangements, even if not strictly speaking legal, might well express quite detailed and predictable—even formal—behavioral guidelines. At a more theoretical level, for some time the general difference between formal and informal attitudes about international law seemed captured by the difference between "positivism" and "naturalism." After theories about the nature of international legal obligation came to seem less important than theories about how international law could be most effective, those drawn to both naturalism and positivism seemed
relatively more formal than those adopting a “pragmatic” or “functional” approach.

Second Primary Spectrum Revisited II

As with the sovereign autonomy/sovereign community spectrum, relations between the poles of the formal/informal axis are often experienced by international lawyers in progressive terms. There are familiar progress narratives in both directions. Generally, international lawyers stress the movement from formal rules—often associated with the bad old days or the difficulties of our fallen moment—towards a day when one could merge law more completely with international social life. In this telling, the functional and pragmatic international law with which we left the twentieth century is far superior, ethically and historically, to the formal international law with which we began a hundred years ago. Since the late-nineteenth century, international lawyers have quite consistently told the story of international law’s development as the overcoming of a formal, positivist law rooted in a rapaciously political world of sovereign autonomy by a more pragmatic or functional law appropriate to a more mature international community. But here there is also a counter-narrative. Sometimes international lawyers stress that the functional international law we have gotten used to has made a virtue out of the pri-
tive vice of living in an age of sovereign disaggregation. In the future, when states have come to cooperate with one another more fully, we will be able to construct the more familiar vertical and formal legal institutions that we are used to in our more developed national systems.

These broad notions about progress can give arguments for one or the other pole a persuasive advantage. For most of the last thirty years, if you emphasized the enduring need for form or the ongoing formal rights of sovereignty, you were likely to seem behind the times. Those who defended the formal (or sovereign autonomy) end of the spectrum generally did so in “realist” terms: they admitted such thinking seemed less far forward but felt the world had simply not yet moved as far along as their colleagues at the functionalism (international community) end of the spectrum might wish. This sort of temporal association is contestable, to be sure. From a formalist point of view, those who stressed pragmatism about law in the name of a more complete international community seemed “idealist.” But it was sometimes also argued—and one finds this even more often in the last few years—that the pragmatist consensus of the post-war mainstream was itself behind the times, a corporatist welfare state conception ripe for replacement by the modernizing and emancipatory vision of a new formalism.

These ideas about the “up-to-date-ness” of various points of view about international law can also differentiate national traditions. American and European international lawyers often understand their differences in these terms, placing Americans on the anti-formal/pragmatic or community end of things. Sometimes the difference between the geopolitical “center” and the “periphery” can also be marked in this way, with actors at the periphery occupying the form/autonomy end of the spectrum. These associations can make some arguments seem more or less persuasive than they might otherwise be. First world arguments for transnational arrangements based on technical or policy considerations can seem very up-to-date common sense, or they can evoke memories of a hegemonic colonial practice remembered to have pre-dated the emergence of formal rights. The plausibility of both images is enhanced because they echo familiar turns of this conventional disciplinary vocabulary. Sometimes these conventional disciplinary associations can come to be locked up with polit-
tical configurations and identities, not simply because one group always makes one argument—in fact this is rare—but because these associations themselves come to be marks of differences among political groups. To be a third world international law scholar at one point simply meant that one emphasized formal sovereign entitlements and opposed pragmatic thought as *per se* a hegemonic practice.

We might also think of these progress stories in ethical terms. One might think, for example, that a rigid defense of sovereign autonomy represented an ethical advance—to self-determination, to equality of nations, and to democracy in international affairs. At the center, this seemed true in the late-nineteenth century. In the colonial world, it was a popular idea during decolonization, and it remains so in many quarters. But one might also think that a legally entrenched sovereign autonomy licensed inhumane domestic policies, and a move to a more porous, communitarian international law represented an ethical advance. This has been the dominant feeling among international lawyers at the center, and most particularly in the human rights and humanitarian law communities, throughout the twentieth century. For people who feel this way, those elements of international law that continue to entrench sovereignty are an embarrassment, suggesting a complicity between the field of international law and whatever humanitarian catastrophes come to be shielded as legitimate exercises of sovereignty. Against this background, it is absolutely comprehensible that mainstream international lawyers will want to understand the relationship between sovereign autonomy and international community in progress terms—to push the field’s defense of sovereignty into a “traditional” or “positivist” past and situate themselves with a field whose moral hygiene is guaranteed by its vigilance against backsliding from pragmatism to formalism or from the right to the left columns of my little charts.

Although these broad narratives about progress or ethics can seem to freeze argument along these spectrums in familiar forms, this vocabulary retains a great deal of plasticity. For one thing, as international lawyers have argued with one another about issues—about the appropriate mix of legislation and adjudication, about the relative importance of treaties and custom, or about the appropriate role for institutions—and have elaborated the boundaries of the field—arguing about the ap-
appropriate level of engagement with politics, with commerce, or with the base—everybody is mixing and matching arguments from across the full range of these axes. Indeed, it is unusual to find anyone close to the end of either spectrum. Most everyone acknowledges the importance of both rules and broader principles; everyone sees a situation for both sovereign autonomy and international community. No international lawyer imagines law in mechanical terms, just as no international lawyer would see it simply as an expression of natural values or religious principles. International lawyers who criticize one another also often do so in multiple ways—European international lawyers might well characterize Americans as both too squishy about “policy” or “soft law” and as too literal about formal commitments, or as both hegemonically committed only to our own sovereignty and too idealistic about the possibilities for international community.

As a result, interpreting positions on the spectrum between formal law/sovereign autonomy and functional law/international community in progressive or ethical terms runs into a sort of Zeno’s paradox. Since everyone is situated in some way between the extremes of these spectrums, one may approach without ever quite reaching rules or institutions that clearly signal the presence of an international community; one may downplay, but never quite eliminate, rules or institutions that seem to express the imperatives of legal form. Framing a choice between two arrangements—say, custom and treaty—in terms that implicate the larger issues of sovereign autonomy and international community, or a formal and an anti-formal international law, runs into the difficulty that custom and treaty can often be recharacterized to lie elsewhere on the spectrum. Just when one has railed against custom for entrenching the politics of the past and defended treaties for their ability to legislate with the times, custom can seem altogether flexible and modern compared to the requirement that states reach formal consent before anything can be done—a formula guaranteed to produce vague political compromises rather than workable rules. It is a common experience that no sooner is a more functionalist/community-oriented and, hence, more “progressive” solution reached than it finds itself open to criticism as emblematic of the formal order wedded to sovereignty which must be overcome. It is in this sense we

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might say that there is a deep ambivalence about both the direction progress takes and the terms with which it is marked.

As international lawyers have worked to improve international law, they have elaborated arguments to defend, as well as attack, almost all of the alternative methods to build a legislative, adjudicative, and administrative legal system at the international level. In looking back at international law, both the recycling of arguments and positions as new and the conviction that things are getting better and better are quite striking. Typically, very broad critique clears the ground for much more narrowly framed reform, just as positions which differ only slightly along a continuum are criticized for embodying all the defects of the extreme. Thus, for example, in the 1960s, some international lawyers were quite blunt in affirming that international law had “fetishized” both the sovereign and the law in ways which harmed the periphery, and they called for treating General Assembly resolutions as “soft law” to reset the balance. If we look back at a century of proposals to renew international law, it is striking how many central figures in the field rhetorically positioned themselves as outsiders challenging a field gone astray, even as they proposed relatively modest readjustments in the field’s doctrinal or institutional fabric. Of course, neither this imbalance between general arguments and specific reforms nor the repetition of reform arguments necessarily suggests that the reforms were bad ideas. A field is never working on all of its preoccupations simultaneously; it forgets many of its best ideas and needs to be reminded. Proposals differing only very slightly in fact might have dramatically different consequences. Perhaps only very general arguments could be expected to persuade. Perhaps these were worthy reforms for other reasons, and only an urgent, if exaggerated, polemic would have done the job. That, however, leaves us with the puzzle of where we might look for those “other reasons.” Still, two things remain striking. First, doctrinal and institutional reforms are overwhelmingly evaluated in terms of these broad arguments about their significance for the system as a whole. It is surprising how rarely international lawyers argue for particular projects in

terms of the specific distributional or strategic consequences for particular groups that will result. Second, the field’s general terms, like “high” and “low” Protestantism, are understood by most everyone not to be entirely persuasive, nor nearly as dispositive, as the arguments made using them would suggest.

E. Schools of Thought in International Law

To be a “school of thought” in international law means to have a relatively stable position on these broad theoretical questions, in the same sense that being a Protestant denomination means having a relatively stable position among other denominations on the axis from high to low. No one thinks these will ultimately be defeasible positions. On the contrary, people in the field imagine that virtually all the possible positions are already on the table and have been found inadequate. Nevertheless, we are familiar with international lawyers who see autonomous sovereigns behind every bush, and others who see everywhere a community at work. Likewise, we know those who think in terms of rules and worry about defending law’s autonomy from subjective and political influences and those who think about principles and policies and worry about ensuring law’s links with its context.

Understanding a school of thought in the field means understanding where on the continuum of different answers—all understood to be bad answers—a given group gravitates. Do they tend to think of law in formal and autonomous terms? Do they emphasize that law can only be built among sovereigns by consent? Do they worry about diluting law’s autonomous contribution to order by freighting it up with other issues and considerations? Well, people with those instincts have been in the field since the mid-nineteenth century. Often, they have been called “positivists.” Do they think of law more fluidly? Are they worried about values and context? Do they stress the dangers of a law drifted free of the real world? Again, these are familiar faces; we used to call them “naturalists.” Do they fall someplace in between? Is their instinct to split the difference? Do they stress pragmatism over principle? Again, such people are familiar: the “eclectic,” or “Grotian,” tradition.
Some Conventional Schools of Thought About International Law

- Positivists, Neo-
  - Positivists and their
  - progeny

- The Grotian Tradition
  - The Esoteric School

- Naturalists, Neo-
  - Naturalists and their
  - progeny

In traditional textbooks about international law, these schools of thought are often introduced by listing ideas or propositions to which people in the schools are thought to adhere. Positivists "believe" that international law must be sharply separated from politics and that sovereign obligations must be limited to those rooted clearly in consent, and so on. In my experience, descriptions of this sort misunderstand the experience of "being" a member of a school of thought. Since no international lawyer is comfortable at the extreme ends of either the sovereign autonomy/international community spectrum or the formal/informal law spectrum, all of these schools of thought blend these positions. Even the classic texts thought to establish these schools are, on closer reading, more nuanced than one might think given the beliefs later attributed to the school.

Describing a school of thought in terms of the "beliefs" of its adherents has much in common with the way religious groups are described by secular commentators—Catholics "believe" this, whereas Methodists "believe" that, translating creed fragments into marks of social identification on the common secular assumption that what it means to be religious in the first place is to "believe" some set of (probably indefensible) propositions. Commentators describing "schools of thought" in international law often view them as if they were, in this sense, religious cults. Now that it is widely understood that none of the specific propositions which define the differences among schools are, in fact, defensible, it seems appropriate to treat anyone who "belongs" to a school of thought as if he or she "believed" something—was committed to a set of propositions in some irrational way. For people of sound and refined judgment, being part of a school of thought can seem vaguely juvenile, substituting loyalty and belief for rational argument, and long-term commitments for careful case-by-case analysis. There are two difficulties here. First, it turns out that the careful case-by-case analyst goes on to distinguish cases in precisely the terms that distinguish schools of thought. Second, people
who do participate in a school of thought do not experience their affinity as a matter of "belief" in a set of propositions.

In fact, all the schools of thought in the field quite self-consciously reject extremes of this sort and eschew propositional clarity about their commitments. It would be far more accurate to describe what it means to participate in a school of thought by focusing on a person's argumentative default position, his or her instinct in arguing about the field's central questions or basic doctrinal and institutional choices. A "positivist" will start off thinking about any of the choices we have looked at more sympathetic to the left-hand pole, and will tend to see anyone less "positivist" than him or herself as making the errors of the right-hand pole. For a naturalist, it will be the reverse. It is not surprising that as argument about these matters has gone on, more and more mainstream international lawyers resist identification as either positivists or naturalists, but see themselves instead as "Grotians," instinctively eclectic about all the choices we have looked at. Because all these "eclectics" continue to argue with one another by treating their opponent's position as if it implicated the dangers of an extreme which would give away the project of international law altogether, it is common to think other people belong to schools of thought and argue from belief, while one's own position reflects a sensible analysis of a specific and nuanced situation.

F. "Renewing" the Field by Transforming the Terms of Debate Among Schools of Thought

If we return to our timeline, in each period of renewal and consensus the field has been arranged in slightly different "schools of thought." During periods of consensus, international lawyers arrange themselves and the issues on which they work across the spectrum of available schools. During consensus periods, moreover, all schools have been more confident in the existence of an autonomous international law, more hopeful about rules, and more committed to a universal law for the entire international community. The consensus often begins by associating formality quite strongly with sovereign autonomy, drifting eventually to associate it with the needs and requirements of the community.

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During periods of disciplinary crisis, the goal of intellectual work is often to rearrange and restabilize the intellectual terrain, and the configuration of "schools of thought" is itself up for grabs. During these anxious periods the field has repeatedly generated urgent and enthusiastic calls for interdisciplinarity, for a more embedded and anti-formal international law. These typically begin as crisis efforts to reconnect international law with what seems the political, economic, and cultural world of autonomous sovereigns, often then drifting to become more idealistic expressions of hope for a better world community.

Waves of scholarly development thus seem to combine several types of change in the use of the discipline's vocabulary. There is drift—propositions that begin as insistent recognitions of current reality come increasingly to be expressed as idealist projections for a world community. There is pendulum movement—back and forth between the formal law/community sides in periods of consensus, and then to the anti-formal/sovereign autonomy sides in periods of anxiety. Then, there is movement more, if you will, spiral in character: as the arrangement of schools along these axes is itself transformed, the discipline seems to move forward or mature.

We might illustrate some common drift and pendulum swings from consensus to anxiety like this:
Periods of Consensus - Moments of Anxiety

A typical period of consensus settles on a formal image of international law, at first justified as necessary to harness sovereign consent, later drifting to express an idea about the possible nature of the international community. In a typical moment of anxiety, this image of international community seems out of touch with reality, only an aggressive anti-formalism can re-embed law in the realities of contemporary power among states. This anti-formalist insurgency itself slowly drifts to express a set of ideals about the community of states and may even become itself ever more formal as it increasingly becomes part of the consensus. The swords of consensus and critique cross most assertively when mainstream formalism seems to represent a false community, and anti-formalism promises to put law back in touch with the real.

This sort of default association is just a starting point, and the disciplinary vocabulary remains extremely fluid. During all periods there is plenty to appeal to on both ends of these axes, and one can often reframe the situation as one of consensus/stability or of anxiety/change. It is more interesting to understand how the discipline has transformed its own terms and rearranged the commitments of its schools of thought.
over time. This “maturity spiral” by which schools of thought are themselves transformed requires a bit more context to explain.

Prior to the Second World War, the U.S. international law academy thought itself roughly divided into positivist and naturalist schools of thought. These schools were differentiated by their tendency to argue from the formal law and sovereign autonomy poles (positivists) and from the informal law and sovereign community poles (naturalists).

Schools of Thought in American International Law 1925-1939

<table>
<thead>
<tr>
<th>MAINSTREAM</th>
<th>COUNTERPOINT</th>
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<tbody>
<tr>
<td>Positivists</td>
<td>Naturalists</td>
</tr>
<tr>
<td>Sovereign autonomy</td>
<td>International community</td>
</tr>
<tr>
<td>Formal law</td>
<td>Informal law</td>
</tr>
<tr>
<td>PCIJ</td>
<td>League / ILO</td>
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<tr>
<td>International law</td>
<td>International relations</td>
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The consensus default during this entire period was to the left end of both spectrums, although the insistence on sovereign autonomy was often framed as an expression of the liberating nature of the international “community,” which had facilitated projects of nationalism and then enforced a formal equality among all states. This period was, far more dramatically than even the late nineteenth century, the age of positivism in international law.17 Throughout this period, however, there were also dissident voices urging a less formal, more embedded law as a better expression of political reality and as an expression of a higher, more integrated international community. These voices were strongest in the anxious period just

17. For a more complete account of this story, see generally International Law in the Nineteenth Century, supra note 4 (discussing the place of the nineteenth century in the tradition of international law and in the imaginary life of international lawyers today).
after the First World War, when the discipline was most resolute in rejecting the legacy of the Hague System set in place at the end of the nineteenth century and seen to have failed in 1914. They were often associated in the United States with political science rather than law, with progressive Wilsonianism, with support for the League, and with interest in international organizations more generally. They were also strong in the Catholic tradition. Although they faded from the mainstream of international law after the establishment of the Permanent Court and disillusionment with the League, they remained present as a kind of ethical and political counterpoint. By the late 1930s, the terms differentiating the schools had become muddy—positivists framed their codifications as expressions of community; naturalists often saw in sovereign autonomy both ethical value and pragmatic engagement with the realpolitik of the state system. However, throughout this period, international lawyers could easily frame arguments about doctrinal and institutional issues as choices between a naturalist and positivist approach, exactly as Protestants could reframe an extremely muddy array of hybrid positions in high and low terms.

After the Second World War, the terrain changed dramatically. All of pre-war international law was in disrepute after 1945. The positivists in the United States had been largely isolationist, and the naturalist enthusiasts for the League seemed to have been altogether out of touch with the world of political possibility. Many international lawyers simply fled the field for commercial law or political science. The new conditions of nuclear weaponry and a preoccupation with the contrast between “democracy” and “totalitarianism” made the old diplomatic images of great power balances seem off the mark. Numerous efforts to criticize, reform, and renew the profession were launched in the late 1940s and 1950s. The vehemence and range of criticisms advanced in these years continues to be startling.

Critics attacked both positivists and naturalists. The positivists, it was said, had been right to remain rooted in what sovereigns would abide, but wrong to defend a law too formal and inflexible to adapt to new circumstances. Pre-war naturalists were criticized for their disregard of actual political conditions and their effort to deduce values from past legal texts rather than from the conditions of current human life at the
international level. Although the naturalists had been right to see law as an expression of community values, they had been wrong to ignore the need for clarity about norms. Those progressives who had been wedded to the League were criticized for idealism, for worship of an archaic institutional form, and for refusing to think broadly about “world public order” however and wherever it might be achieved and instantiated. And so on.

Many of these criticisms sounded, at first, just like arguments one might have had before 1945. If you criticized the positivists, you could be heard to be a naturalist, or perhaps a “neo-naturalist.” If you criticized the naturalists, you could be heard to be a positivist, or perhaps a “neo-positivist.” If you criticized both, you were perhaps an “eclectic.” During the 1950s, however, a new consensus began to emerge which would last for more than thirty years and which divided the intellectual landscape differently. The basic high-low orientation was transformed until positions were no longer understood to reflect either “positivism” or “naturalism.”

Most international lawyers in the United States rejected both naturalism and positivism in favor of a general sensibility influenced by pragmatism, functionalism, American legal realism, and the American legal process school. In a sense, it is correct to say that after the Second World War everyone was an eclectic, far more flexible in bringing to bear arguments from across the spectrum on any given doctrinal or institutional choice. But there was also a wholesale reorganization of the main intellectual commitments which defined “schools of thought” in the field. By 1960, the post-war generation of international lawyers and academics had established two new schools of thought between which international lawyers in the United States then arranged themselves for a generation. At an intellectual level, this dramatic reorganization is perhaps the most striking instance of new thinking and disciplinary renewal in the last century.

At one end of the new spectrum was the Yale School, dominated first by Harold Laswell and then by Myres McDougall, and at the other end there was the Columbia School, led by Louis Henkin and Oscar Schachter. Just as in the pre-war discipline, there was a positivist mainstream and a naturalist counterpoint; now the Columbia School became the main-
stream, and the Yale School became the counterpoint. Neither was either naturalist or positivist.

The Yale School situated itself toward the policy end of the formal/informal law spectrum and toward the sovereign autonomy end of the sovereign autonomy/international community spectrum. The Yale scholars worked self-consciously in the tradition of American legal realism and were most insistent in their critique of formalism—as practiced by both naturalists and positivists. They introduced the word "policy" into the international law vocabulary as an alternative to norms—a category of judgment and political management standing outside of hard and soft law, rules and principles. As they moved further toward the right side of the formal/anti-formal axis, they were also acutely aware of scholars still further from legal form who had abandoned international law altogether for political science—people like Morgenthau. 18

The debate with Morgenthau was far more important to the Yale scholars than relations with the emerging Columbia mainstream. The Yale scholars differentiated themselves from the new political science “realism” of Morgenthau and others by stressing a commitment to order among sovereigns and to values and policies rather than to a Hobbesian individualism among states. Relative to the Columbia scholars, however, all this engagement with Morgenthau placed the Yale School far closer to sovereign autonomy, far less interested in an international legal system of norms, institutions, and community commitments. It was typical of the Yale School, for example, to stress competition across the Cold War divide and for the Columbia scholars to stress the possibilities for cooperation. Even where they settled on the idea of “coexistence,” they gave it a quite different spin. The policy school focused on promoting a world order of freedom within the context of a necessary coexistence, while the Columbia scholars envisioned a more formal coexistence of neutral procedural rules binding even upon superpowers. The Columbia scholars sought out counterparts among Soviet scholars who sounded reassuringly positivist; the Yale scholars were always more skeptical about the role of international law in Soviet policymaking.

18. For a good introduction to this work, see Myres S. McDougal, Law and Power, 46 Am. J. Int’l L. 102 (1952).
The Yale scholars were insistent that however “realistic” one should be about power and the centrality of sovereign states to international relations, one must also understand that the current international regime nevertheless expressed a form of community ordering. The primary task for international lawyers was to attend to the “world public order” which emerged from a given legal regime, the values, policies, and distributions it expressed and established. This was a world public order quite different from the community focus of pre-war naturalists and progressives, however. The current system of world order was based fundamentally on sovereign autonomy, and, as the Cold War advanced, the Yale scholars came increasingly to believe that the prime guarantor of a world public order expressing the values of freedom and human dignity would be one which legitimated the policies of the Western alliance and of the United States, exercising its sovereign prerogatives. By 1960, the Yale School represented a solid alternative that was neither positivist nor naturalist; it combined a strong anti-formalism with an insistence on “realism” about sovereign autonomy as the basis for world community. It had broken the link between an anti-formalism and pre-war institutional idealism, as well as the link between sovereign autonomy and pre-war formalism about norms.

At the same time, the Columbia School was moving in exactly the opposite direction. These scholars were also critical of pre-war positivists—but for their emphasis on isolationism and sovereign autonomy, not for their commitment to norms. They were also post-realist scholars and had a healthy skepticism about the solidity of codification. They criticized pre-war naturalists for their emphasis on texts and their lack of flexibility in interpreting the mandates of international institutions. Their commitment to norms celebrated principles as much as rules, soft law as much as hard, flexible as much as strict interpretation. For those in the Columbia School, the point was to build an international legal order focused on the institutions of the United Nations, to establish a normative fabric that could bridge the gap between East and West, and to establish a flexible institutional locus for decolonization and development in the Third World, outside the Cold War divisions. This search for a humanist neutralism required norms—in human rights, procedure, and administrative law. Too much policy could easily jeopardize the search for a community acceptable
to East, West, and South, and for this they continually criticized the Yale School. At the same time, however, the Columbia scholars were acutely critical of those more formal still—old-fashioned positivists who seemed unable to accept the flexibility necessary to manage a complex international community organization like the United Nations.

If the Yale School was preoccupied with arguing against political science realism in the name of an anti-formalist order, the Columbia School was preoccupied with arguing against a resurgent positivism, which they identified with the international law discipline abroad and which they saw as the major impediment to a cooperative order. This made them firmly anti-formalist relative to pre-war positivists. They could not do enough to denounce "sovereignty" as a fetish, a conceptual error, a linguistic mistake. Still, relative to the Yale scholars, they emphasized the centrality of rules and institutional procedures for building a global community able to address issues of development, decolonization, and later human rights. Dag Hammarskjöld came, in many ways, to represent an ideal—neutral, committed to a law of principle, yet politically flexible. By 1960, the Columbia scholars represented a clear alternative to the Yale School, one which was also neither positivist nor naturalist in the pre-war sense. They combined a weak anti-formalism with a commitment to neutral norms and humanist institutions as law for the modern international community. They had broken the link between a formal commitment to norms and the insistence on sovereign autonomy that had characterized pre-war positivism. But they had also broken the link between a commitment to international community and the idealism of pre-war progressives and naturalists.

After 1960, the Columbia School came to overwhelming dominance in the field, emphasizing norms over policy and international community over the interests of sovereigns. It seemed at once humanist, progressive, even vaguely left-wing.

and committed to a normative order. The Yale School came to offer a permanent counterpoint, offering a more sophisticated theoretical anti-formalism and a more jaded realism about American power in a bipolar world. It is difficult to illustrate this striking transformation clearly. On the one hand, the associations of formalism/sovereign autonomy and anti-formalism/community were simply reversed, transforming the broad alternatives in the field in ways which felt like disciplinary maturation. At the same time, each school felt that the elements it was gathering from the past had been transformed—the Columbia School’s commitment to norms was quite self-consciously not formalist, as pre-war formalism was then understood. The Yale School’s interest in world public order was not idealist about world community, as had been the pre-war naturalists and progressives. More importantly, its interest in sovereign autonomy was neither a fetishization of sovereign rights nor a Hobbesian politics of state freedom of action. Of course, these historical disassociations were often exaggerated; pre-war positivists may not have been that formal, nor naturalists that unrealistic. The Columbia scholars often did seem rather idealistic; the Yale folks often hard to distinguish from positivists insisting on sovereign prerogatives, or political scientists skeptical of all legal commitments. Still, by 1960, the disciplinary vocabulary had been both redefined and rearranged in ways that felt like a maturation. We might illustrate this transformation as follows:
This realignment was not generated by direct engagement between the Yale and Columbia Schools. Scholars who would eventually be the leaders of each were working to re-imagine and revitalize the field as a whole. In doing so, they were pre-occupied with different interlocutors, outside or on the margins of the field, whose views they saw as both unrealistic and dangerous. We might say that the Yale and Columbia Schools simply backed into this new relationship with one another. We might illustrate this preoccupation with outsiders as follows:
Looking back, one finds people who made their mark representing one or another of these positions quite literally, who felt the very possibility of international law hung in the balance. Both schools housed a range of positions, however, and there were people in the field who did not fit these new alignments, who preferred to revive the pre-war alternatives and presented themselves as "neo-positivists" or "neo-naturalists." For neo-positivists, both post-war schools threatened to devalue the normative currency. In their view, the Yale School was correct to focus on sovereign autonomy as a realistic starting point, but wrong to untie its hands from the mast of clear consensual norms. At the same time, they felt that the Columbia mainstream drifted too far toward utopianism in speaking for an "international community" whose needs could be translated directly into norms and institutions. For a neo-naturalist, the problems were the reverse—the Yale School focused too strongly on sovereign autonomy; the Columbia mainstream hesitated too much in embracing the plasticity of soft law and instant custom, without which the field would drift into sterile irrelevance.

Nevertheless, this new arrangement lasted more than thirty years. It was only after the end of the Cold War in 1989 that the basic vocabulary differentiating Columbia and Yale began to break up, as that differentiating positivist and naturalist had broken up after 1945. We are now in a period of anxiety, which began with the definitive defeat of post-war liberal politics with the election of Reagan in 1980 and intensified with
the end of the Cold War. After almost twenty years of disciplinary ferment and hand-wringing, the outlines of a new set of intellectual choices are visible. Early in this period of anxiety, there were fleeting efforts to revive the Yale School—symbol of a more flexible alternative to the disciplinary mainstream for a generation—just as there had been a variety of neo-naturalist revivals in the 1940s. Most leading international lawyers under fifty in the United States, however, are now critical of both the Columbia and the Yale Schools. We read that both had drifted into a stasis that was out of touch with new realities. Although a new disciplinary consensus has not yet emerged, there are strong proposals on the table, both for a new mainstream consensus and for a set of methodological counterpoints.

International law in the United States today is brimming over with new angles and methods for renewing and preserving the field by escaping its past limitations. Almost every middle-aged scholar is promoting one or another methodological revolution to alter the current arrangement of institutions and doctrines. In the decade since the end of the Cold War, most of the senior figures in the field have also published elaborate polemics for disciplinary renewal. International lawyers have recommended changes in the legislative, administrative, and adjudicative apparatus of international law, as well as in the balance among them. The field has become a center for political and intellectual contestation. There are military voices; economic voices; populist voices; conservative voices; post-Marxist voices; feminists; queer theorists; scholars whose formation was powerfully inflected by the work of latino/latina scholars associated with the “lat/crit movement,” by the critical legal studies movement, by neo-conservatism, and on and on. National differences are more pronounced. Never has the U.S. international law tradition seemed as idiosyncratic or been in such sustained methodological and political debate with international lawyers in other traditions.

There is no consensus on the meaning or consequences of changes in international society. For some, general efforts to understand “international law” are as outdated as “federal law.” What is needed is in-depth study of particular regulatory specializations (finance, antitrust, etc.) that will remain largely the creatures of national governments. For others, the point is rather the reverse—we should strengthen international “governance” to replace outmoded national specializations. In do-
ing so, some would focus on multilateral processes and others on the interface among national legal regimes. For others, the point is the displacement of Keynesian aspirations for international governance altogether, the triumph of a nineteenth-century liberalism and the predominance of economic law. For still others, the point is to strengthen immersion in foreign law, as either a cultural context or arena for business. For these people, globalization inaugurates a project of understanding differences rather than governing. This diversity is more striking as we reach out from international law per se to other disciplines that share an interest in these issues within the U.S. legal academy—comparative law, foreign legal study, international economic law, transnational law, and so forth—each of which has an unresolved internal debate about these matters which they pursue in their own idiosyncratic terms.


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scholars, the leading “new” scholars of my generation—people like Koh, Slaughter, Alvarez, Kingsbury, and Teson, many of them law school classmates, friends, and colleagues—urge movement toward a new understanding of international community and a new appreciation for an anti-formalist international law. In the new post-Cold War world, they reaffirm some of the field’s most familiar and dogmatic propositions: that sovereignty has eroded, that international law should be understood politically, that the boundary between international and municipal law is porous, that international law may not be as universal as it pretends, and that the international regime is better understood as a process or multilevel game than as government by legal norms. They have taken ideas that have been part of disciplinary common sense for a century—pragmatism, anti-formalism, interdisciplinarity—and turned them into a fighting faith. This methodological self-confidence announces a political optimism: the end of the Cold War will complete the internationalist project, inaugurating a humanitarian “civil society”—an “international community” that will dethrone the state, welcome wider participation, and open international law to the political.

The specific reform proposals on offer—using domestic courts to enforce international norms, harmonizing national regulations rather than seeking international norms, using international law principles to energize a broad coalition of non-governmental organizations rather than rule-making by inter-governmental agencies, and reimagining the international judiciary as a player in a social game whose currency is legitimation—differ quite a bit, but the form in which they are presented is broadly similar. They urge greater disaggregation of international law, more reliance on national institutions, and more blurring of the lines between law and politics and between national and international law than before. In reaction, dissident voices have begun to coalesce around an insistence on relatively more formal conceptions of law, and rather more skepticism about the possibility of an international community.

These new mainstream voices criticize the Columbia School for overestimating the role of rules and insist on a revitalized anti-formalism. At the same time, however, they criticize the Yale School for staying too close to Morgenthau's political science of autonomous sovereigns. What is needed is an appreciation for the disaggregated nature of the international regime, an appreciation now common in at least one strand of American political science scholarship with which these international law scholars ally themselves. The idea is to break the association between the community orientation of the Columbia School and its overemphasis on rules, while at the same time breaking the Yale association between anti-formalism and sovereign autonomy. By focusing on relations among national courts, on the decentralized application of a burgeoning legal fabric composed more often of private rules, and the administrative accommodations among the executives of liberal states, it is possible to picture a legal regime that would not be composed primarily of conventions and customs based on universal consent—but neither would one be deferring to a policy science unmoored from law. As the Cold War removes the necessity to focus on law among enemies, it seems easier to imagine a "regime" of norms that is not based on sovereign autonomy and that might relativize the state to the status of one actor among many.

As we might expect, a set of alternatives to this proposal for mainstream revitalization of the field is also emerging, on both the right and the left. Relative to the centrist proponents of "transnational" and "liberal" law, the new counterpoint positions stress the formality of entitlements and the autonomy of actors. On the center-right, this comes from "public choice" scholars, often working in the neighboring field of international economic law, who model the emergence of institutional regimes on the basis of game theories rooted in the autonomy of decision makers and sympathetic to the possibility of a formal legal fabric.21 On the left, the field of interna-

tional law in the United States is now home to a large variety of scholars rethinking the field from the perspective of one or another "identity politics." To get purchase against the


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emerging transnationalist mainstream, these scholars stress the relative stability of their identity positions, as women, people of color, Latin Americans, gays and lesbians, indigenous or disabled people, or third world nationals. They also stress the relative formality of entitlements necessary for their protection. They have been preoccupied with responding to both extreme assertions of third world sovereign autonomy which they associate with earlier generations of international law scholars from the periphery and with assertions of cultural relativism which would undermine the aspiration for universal human rights. Here we find all sorts of human rights enthusiasts who have broken the link between relatively formal law and a universalist international community—and in that departed from even the Columbia School’s mainstream enthusiasm for human rights. But they have also broken the link between a public order system based on the autonomy of actors and the anti-formalism of the Yale School.

International lawyers in the United States are on the verge of rearranging the basic high-low arrangement of positions in their field for the second time since the end of the Second World War. Just as positivism-naturalism seemed to exhaust the alternatives until they were replaced by the opposition of Yale and Columbia, so now that thirty-year debate is being displaced by a new opposition. Scholars proposing a “transnational-legal-process-liberal” position suggest themselves as a new mainstream for the field. Within the discipline’s available


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lexicon, the main alternatives so far visible have staked out positions more attentive to the autonomy of actors and the formality of entitlements. We might chart this proposed re-orientation of the field as follows:

**Schools of Thought 1960-1989**

**MAINSTREAM**
- Columbia School
  - The Mainstream
- International Community
- Norms

**COUNTERPOINT**
- Yale School
  - Policy School
- Sovereign Autonomy
- Antiformalism

**Proposed Schools of Thought 1990—**

**MAINSTREAM**
- Transnationalism
- Legal Process
- Liberalism
- The New Mainstream? (center)
- International Community
- Civil Society
- Antiformal
- Interdisciplinary
- Embedded law

**COUNTERPOINT**
- Dissident Voices
  - Public Choice (right)
  - Identity Politics (left)
- Relative autonomy of actors
- Relative formality of entitlements

This opposition was less accidental than that between the Yale and Columbia Schools. The dissident voices in the last few years have self-consciously sought to respond to the claims of the transnational-legal-process-liberalism proponents. People in the emerging mainstream, as well as those associated with various potential counterpoint postures, have also understood themselves to be in conversation with people outside or on the margins of the field. In many ways, the insight that

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enabled the transnational-legal-process-liberalism school to get going was a reinterpretation of who the mainstream needed to be opposed to—reinterpreting the political science realists (who had been the interlocutors of the Yale School) to have been formalists (the interlocutors of the Columbia School). The dissidents, at least on the left, have been concerned to distinguish themselves from those yet more into formal entitlements and sovereign (or identity) prerogatives. We might illustrate this as follows:

![Diagram showing progressive realignment between mainstream and counterpoint]

If we put these realignments together, we can trace changes in the disciplinary lexicon as successive generations rebuild the discipline’s mainstream by rearranging central terms, borrowing from and criticizing earlier approaches from both the mainstream and the more dissident counterpoint, and focusing attention on different threats external to the field. If we put the history together, it looks like this:

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G. A Professional Vocabulary: A Good Thing or a Bad Thing?

Now that we have a satisfactory, if elementary, map of international law's disciplinary vocabulary and of its transformation over time, three sorts of questions remain on the table. First, it is difficult to understand how this extremely plastic and repetitive professional vocabulary develops—why does one or another school of thought become the "mainstream," another only a "counterpoint"? Why does the arrangement of schools remain stable for long periods, and then rearrange itself so dramatically in only a few years? Perhaps more intriguingly, we know that some ideas within this vocabulary become
associated with different national traditions, as well as with different political and personal commitments in different periods. The particular story of transformation I have just told is typical of the United States, although the views which became “mainstream” here have also appealed to international lawyers in other places at different times. It is common, moreover, to associate mainstream positivist international law in the United States before 1941 with the center-right of the political spectrum, while the mainstream of the Columbia School, as well as the proposed mainstream of “transnational-legal-process-liberalism” is associated with the center-left of American politics. Personalities also play a role—the Policy School took on its particular shape in large part as a result of Myres McDougal’s intellectual and political biography. Why, we should wonder, does one or another set of ideas within this broad vocabulary come to dominate at a particular time, and what animates movement among these ideas?

Second, we should wonder if this vocabulary limits the international law professional in any significant way. An astonishing range of different phenomena has been understood in these terms over the last hundred and more years, and the vocabulary seems repeatedly to renew itself in the face of a post-war anxiety about new political and economic realities. And yet, it is common in other fields to understand that a discipline’s professional vocabulary makes some sorts of problems easy to think about, some solutions easy to imagine, and others more difficult. International lawyers would have little difficulty speaking about the blind spots and biases of economists, political scientists, and even domestic lawyers. It is useful to turn that skepticism on the field’s own vocabulary—for all its flexibility, does this lexicon leave some things unsaid? This will be particularly important to assess during periods, like this one, of disciplinary contestation, anxiety, and reform. Do the proposals now on the table—a center-left proposal for a new mainstream of transnational liberalism and dissident voices from public choice theory and identity politics—capture the full range of the politically possible? The next part of this essay addresses these two concerns: the process by which this vocabulary is animated by people in the profession and the limits it poses for their imagination.

Third, we should wonder about the status of this vocabulary, particularly if we conclude that it limits the political imag-
ination of international legal professionals and can be captured by personal and collective political projects of various sorts. Although most international lawyers now see themselves as pragmatists who embrace all camps in moderation, this vocabulary retains its capacity to express broad new proposals to renew and reorganize the field. Indeed, international lawyers remain remarkably confident that general arguments made in these terms do have bite in making practical choices among reform proposals, however convinced they seem that abstract arguments about precisely the same issues do not. We know that these theoretical alternatives continue to provide loose orientations and strategic attitudes and suggest differences in professional style or character. But are there alternatives? How compulsory is debate in these terms? Can renewing the field mean something other than a reorganization of this vocabulary? In the third and last part of this essay, I explore some efforts to think about international law in other terms.

III. WHAT ELSE IS GOING ON? THE LIMITS OF EXPERTISE, THE UBIQUITY OF POWER, AND THE STRUGGLE TO TRANSFORM THE PROFESSIONAL LEXICON

A. A Traditional Picture of the Progressive Discipline: Benign Politics and Evolutionary Change

Changes in international law’s professional vocabulary are traditionally explained as disciplinary adaptations to changing circumstances brought about by the power of good ideas developed by innovative and ambitious individuals. The discipline of international law expands or changes its professional lexicon as well-meaning people learn from the mistakes of their predecessors and think up new and better ways to solve problems in the real world. In this conception, there are real problems out there; at any given time, there is a set of possible professional responses, and there are individual lawyers and scholars motivated to adapt and improve the range of responses in the face of new problems. This traditional picture underestimates the dark side of the discipline’s own broad expertise, the blind spots and biases which survive transformations in the disciplinary vocabulary. It also underestimates the presence of political projects and group endeavors among professionals in the field which influence the distribution of ideas within the professional lexicon and often harness elements in
that common vocabulary to extra-disciplinary political projects and individual ambitions.

In the traditional picture, most of the profession's responses to problems in the world are routine, even if they do require a level of professional creativity: good ideas from one organization are borrowed by another; what worked in the fight against one disease is tried in the battle against another; mechanisms for interstate cooperation developed in the pursuit of arms control are adapted to environmental regulation; and so forth. Periodically, of course, the discipline can get stuck as the world situation changes, and more radical reform can be necessary. This often happens when wars end, or when new technologies suddenly shrink the globe. In such times, the entire lexicon of responses may need to be reshaped, and here we rely on the creativity of individual scholars, animated both by professional ambition and a desire to help the field. These exceptional individuals come up with ideas about how the field should respond to new conditions and provide helpful analyses of what has gone wrong. If the ideas are sensible and useful, they will be picked up and may contribute to a new disciplinary consensus about how a wide range of problems might be addressed. If they are not useful, they will be left to one side.

Thought about this way, the role for scholarship is a rather restrained, if crucial one. Scholars can be helpful in three basic ways. They preserve and pass on the available lexicon of professional techniques, acting as libraries of past practice and as information delivery devices. In this work, it is crucial that the scholar remain neutral and comprehensive in selecting and delivering information—scholarship of this sort is description, not argument. It is influential to the extent it is comprehensive and helpful, but it does not aim to persuade, only to inform. Second, scholars go beyond description and may either suggest ways to modify current practice, proposing that what worked in one area be tried in another, or generalize from past successes and failures in order that they might be repeated or avoided. Scholarship of this type aims to persuade the reader that there exists a better mousetrap, and most scholarly work in the international law field presents itself in this way. Most scholarly arguments about the relative viability of legislative and administrative mechanisms, the ben-
enacts of custom and treaty, and so forth, could be seen as fulfilling this function.

The key here is that there is another group of people, called "practitioners," for whom scholars are doing this work and who will judge its persuasiveness and ultimate value. However, argumentative and critical this work may be, it will ultimately be judged not by other scholars on the basis of its arguments, but by practitioners on the basis of its usefulness. When scholars do judge this sort of work, they do so by reference to the often imaginary eye of the practitioner. To a certain extent, of course, the practitioner's practical work is making arguments for reforms in the same terms scholars use—these practitioners may even be the academics themselves. Nevertheless, when practitioner-beings assess things, they do so with their eyes wide open, unaffected by the fashions and egos that can befuddle scholars. Their focus is relentlessly on the real world where the rubber meets the road, and it is their judgment, or predictions about their judgment, that guarantees the pragmatism and political neutrality of the field's development. Even if "adopting" an idea means only that the practitioner-being argues for it in the same terms used by the scholar to propose it, we imagine that the practitioner-being does so because it works, while the scholar did so only, if you like, on "spec." So long as it is the practitioner-being who selects among the ideas on offer, we can be sure that the dominance of one idea over another, or the distribution of ideas in the field at any given time, is the result of an idea's usefulness, of its "merit" in the world, rather than, say, the power and prestige of its author, or the institutional conditions of its development. If an idea is not taken up and repeated by practitioner-beings, it must not be useful.

And then there are the really innovative scholars who come along once or twice in a generation and explain how the entire range of available professional responses, by scholars and practitioners, has gotten off track. While most international lawyers and scholars are refining and applying traditional remedies to new problems, someone might suddenly notice that in a newly interdependent world, international lawyers systematically overestimate the usefulness of interstate mechanisms and underestimate the possibilities for cooperation at the sub-state level, among private parties, national courts, or administrative bodies. The truly creative work of
these individuals, when it enhances the efficacy of the field as a whole, is rewarded by recognizing its author as the founder of a “school of thought,” which then may become the basis for a range of normal science applications. Although it is possible to make a distinguished career as a compiler of past practice or reliable proposer of modest reforms, to be a truly great scholar in the field means aspiring to an intellectual discovery that will be recognized as a school of thought. Transformative scholarship of this sort is also oriented to the practitioner-being, but the timeline for adoption is longer. When a scholar seems to be aspiring to this sort of recognition, there is a certain tolerance that new thinking may not pay off in this way immediately. After a few years, however, if it does not look likely to pay off, or has not been acclaimed as a broad reorganization of the field’s schools of thought, it is hard to see why, other than professional courtesy or idle curiosity, one should pay much attention. It is quite common for scholars seeking this role to chastise practitioner-beings, including their fellow scholars, for not having picked up on new trends and possible applications. This, along with broad historical generalizations and engagement with the most general terms in the professional lexicon, is a sign that the author aspires to be a generational innovator, as well as an implicit request for release from the need for immediate use payoff. Work of this sort may be judged by other scholars, who will try to assess whether it is sufficiently innovative or rigorous so that one could imagine it eventually operating to make the entire field more useful.

For scholars of all three types, the mandate that scholarship present itself as oriented, at least eventually, to usefulness is crucial. “Pure research” into the history or theory of international law is understood to be valuable only in the hands of people who are smart enough that we might hope they will turn out to offer innovations of great long-term practicality. However violently an innovative scholar might rearrange the terms with which the discipline responds to problems, even the genius does not rethink the problem set itself, neither the discipline’s mission of more law among states, nor the definition of what counts as practical. Doing so would place the effort outside the scope of evaluation and adoption by practitioner-beings. A person who wants international lawyers to work on some problem other than improving public law governance among states might be in the wrong field or might be
trying to twist the field to his or her own political ends, using it or subverting it rather than elaborating it.

The focus on usefulness is not surprising in a professional field which has become convinced that all of its own theoretical arguments and historical preoccupations are in some way unconvincing. We tried doing things that were not useful—and they turned out not to be very useful. We tried figuring out whether formal or anti-formal law was best and whether sovereign autonomy or community should be the basis for our work. It turned out repeatedly that our arguments for one or the other were not decisive, even across our own scholarly community. To the extent international lawyers learn from the very start of their career that there is simply no good theoretical or historical answer to the most central and defining issue in the field—how one can have law among states—it is not surprising that scholarship relies rather upon the judgment of those on the frontline, as it were.

In this tradition, it is always somewhat odd to speak of the "politics" of a discipline. Practitioners may have a range of political objectives and might "use" the discipline's intellectual tools and professional techniques in a variety of ways. In elaborating those tools, however, international lawyers and legal scholars are engaged in an enterprise one step removed from this sort of politics. By some accounts, they are simply "neutral" scientists, developing a legal system that might be used for good or ill. It is more common to think of their work as political only in the rather soft and general sense that the discipline's own broad project is political—for example, that it makes technical management of global problems more likely than war, agreement more likely than conflict, or cosmopolitan solutions more common than nationalist ones.

It is probably only natural that the discipline's understanding of its own broad project is extremely positive—humanitarian, forward-looking, rationalist, universal, and progressive. The field is political in the sense that it tries to replace politics—bad, old-fashioned, violent, nationalist, particularist, rent-seeking politics—with law or with a broader, softer, more rational management "regime." Sometimes, of course, even this sort of project might look political in a more sectarian sense. Most international lawyers in the United States would readily admit that international law is associated with human rights, with the center-left of the broader political
spectrum, just as international lawyers in many countries would accept that international law is linked to the very best, most enlightened elements in their own political establishments.

Nevertheless, two quite different ideas about disciplinary politics are absent in this story. There is little room to reflect on the ways in which the discipline might also have a dark side—that its relationship to war, pestilence, colonialism, racism, genocide, pollution, poverty, or authoritarianism might not simply be a matter of being “used” by others for dire purposes, but that the discipline’s own activity might in some way make such things more probable and more defensible. The effects of blind spots and biases in the discipline’s background problem set on the range of political projects which people in the intelligentsia think possible or desirable is hard to see in this conventional story. And there is also little room for acknowledgment that the discipline might be, in different times and places, captured by one or another specific political project, not simply “used” by political forces, but also subject to an internal politics of struggle among ideas, individuals, groups, and political agendas. Particular terms in the lexicon might become part of a political project, and this capture of the vocabulary by political projects could influence the distribution of ideas in the field far more decisively than the evolutionary coming to common sense of useful ideas.

Also absent from the story is any deep sense for collective scholarly endeavor. Of course, many useful scholarly projects do require the work of many hands; the restatements and codification projects of the last century are perhaps the most obvious examples. In collective projects of this sort, individuals work together on problems in the real world, bringing the tools of the discipline to bear on issues too complex to be addressed by a single scholar or practitioner. It takes many minds to redraw the law of the sea, build a new international law for the environment, or solidify the normative and institutional machinery for the protection of human rights. But collective efforts to develop and promote ideas, to bend the field in one or another direction, and to pursue projects more specific than a general improvement in international law’s ability to build law among states seem out of place in a discipline whose own “schools of thought” are understood to be loose orientations rather than belief systems. Most importantly, they
would usurp the authority of the practitioner-being to judge among ideas solely on the basis of their practical usefulness.

From time to time, of course, the field has experienced group efforts either to bring a forgotten "perspective" to bear or to develop and spread a new "school of thought." We can remember collective efforts to push a "third world" approach to international law, or to promote the "Yale School," for example. For some years now, a number of women in international law have been promoting a "feminist" approach to the field. As conventionally understood, these efforts can be helpful, particularly in allowing a fair hearing for ideas which practitioner-beings might otherwise have overlooked—overcoming, if you like, transaction costs and market failures in the presentation of good ideas to practitioner-beings with problems to solve. But these collective efforts should not be expected to last very long. Their good and useful ideas will be absorbed by the field, and their proponents will become mature and eclectic professionals able to understand the importance of a wide range of possible viewpoints and the usefulness of various approaches.

We recognize the importance of group initiatives as we acknowledge the role of individual ambition and competition in animating our professional community. Disciplinary change emerges from the genius and ambition of both great individuals and important groups—from Grotius to Henkin, from the Third World or the Socialist States to Feminist Women. All bring new ideas to our attention, forcing themselves on the field, attacking adherents, and competing for professional recognition and authority. "We" in this image are eclectic professionals, able to deploy arguments across the professional vocabulary. The pragmatic/rationalist tradition for understanding disciplinary change is thus tempered by awareness of the role played by schools of thought, families of ideas, disciplinary conventions, the family dynamics of Oedipal struggle, anxieties of influence, and so forth. But this recognition is stabilized and itself tempered by the sophisticated and eclectic voice of the professional—scholar or practitioner—who has gone beyond belonging to a particular school of thought and who has no viewpoint but that of the field itself. If we encounter someone insisting too long on a particular perspective, we are suspicious that the person has failed to mature as an international lawyer capable of handling the full range of discipli-
nary arguments and that the particular ideas which need that sort of fealty must not be good enough to stand on their own two feet as useful for the broader field. And if we find a group insisting too long on its perspective, we worry that they are more interested in promoting themselves than in doing the good work of the discipline.

B. Some Doubts Raised by the Mapping of the Professional Lexicon

Thinking about a professional vocabulary in structural or semiotic terms draws this individualist tradition for understanding change in professional disciplines into question in a number of ways. The occurrence of ostensibly practical solutions in waves of fashion—addressing a wide range of specific problems with one voting mechanism for thirty years, then suddenly shifting to another—makes us suspicious that the changes were animated solely by transformations in the problem set, rather than in developments internal to the disciplinary lexicon. This sort of pattern is no proof that the change was not, after all, a practical one—perhaps the discipline came suddenly to see a new possibility with wide applicability—but it makes one want to ask about other possible motives. Mapping the discipline’s classic arguments about its relations with an imagined context of politics, commerce, or nationalism leaves us suspicious that the discipline’s problem set pre-exists the discipline’s technical vocabulary for responding in the way necessary to sustain the image of disciplinary change through responsive pragmatic adjustment. And there is the troubling fact that the entire discipline focuses on a problem rooted in its own image, creating law—which-is-not-politics between-and-not-within states which are-and-are-not the main actors in the system—which-is-not-a-system. Doctrinal or institutional arguments in particular cases are treated as occasions to address this general problem in terms recognizable to other international lawyers. In the midst of all this apparent effort to address the practitioner-being about today’s problems, much of the argument seems actually to address other theory-beings about how a series of contradictory philosophical pre-conditions can be met in constructing a legal system among states. This broad professional viewpoint shapes what international legal professionals are likely to treat as real-world “problems”
in need of solutions—at the very least, the problems of too much politics and too little law, rather than the reverse, transboundary effects rather than boundaries, and departures from "universal norms" rather than the conditions that permit universalization of particular humanist commitments.

Most troubling for the traditional image of disciplinary change, arguments about the usefulness of doctrinal and institutional alternatives—for example, courts versus legislatures and administration versus norms—are conducted in terms drawn from the discipline’s own lexicon. The arrangement of arguments about these matters along a series of axes from "high" to "low" permits characterization of modest changes in terms so extreme as to implicate the very possibility of international law. At the same time, these practical alternatives are often enough subject to re-characterization in other terms so as to make all participants in the discussion at least vaguely aware of a disconnect between the terms of argument and the world of practical consequences. It is as if the rubber can only yearn to meet the road. The result is a combination of sectarianism and agnosticism about the persuasiveness of any particular solution which makes it difficult to imagine a good faith effort to use "practicality" or "usefulness" as a definitive measure for the worth of any particular professional practice or proposal. For all his attention to the practitioner-being, the mature eclectic professional remains remarkably ambivalent about what to do. Arguments about what practitioner-beings think are themselves performances within the field, at least partly pursued with the bad faith of those who know that they are arguing in a self-consciously hyperbolic lexicon.

It is also troubling for the traditional picture that the persuasiveness of particular arguments in the lexicon seems to depend on their place within the lexicon itself. To a certain extent, these might be temporary information market failures. Path dependence, the excessive influence of particular individuals, the advantages of professional fashion, and so forth, could slow down the paring away of ideas and initiatives not useful to practitioner-beings. But some arguments—favoring sovereignty or formalism, community or anti-formalism—also come at various moments to define what it means to be an up-to-date international lawyer at the center or a more "primitive" professional voice at the periphery. It is not that some professionals are hanging on to a "third world perspective" long after

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its usefulness has been absorbed. It is not that too many practitioners continue to be persuaded after the idea has, in fact, stopped being useful. It is that the profession’s own lexicon defines what it means to be in the influential “center,” just as it does what it is to be “useful,” and then assigns other positions to the exotic margin. There is, in this sense, no exit from the professional lexicon to a fulcrum from which to distinguish confidently the over-persuasion of influence, or information market failure, from the “real” use value of the idea.

These observations do not invalidate the idea that international law develops through the good faith efforts of individual professionals to address problems as well as they are able. These motives, those efforts, and such people are certainly part of the story. Unfortunately, however, the available professional lexicon is not particularly well suited for sustaining good faith efforts of this type. The vocabulary for identifying problems and proposing solutions has developed by elaborating a set of professional, rather than pragmatic, preoccupations. The process by which professionals differentiate cases and argue for and against reforms of various types within a plastic and ambivalent disciplinary vocabulary places them repeatedly in a posture of exaggeration and leads them to recast effects on the field as effects on society—to mistake narcissism for empathy. But they do still solve problems: they do learn as they go, and they do adjust the field’s vocabulary as a result.

Several questions require further exploration, however. First, we are left with the question of whether there are, in fact, blind spots and biases in the disciplinary vocabulary as a whole and whether the professional lexicon has political consequences for the intelligentsia, in the sense that it makes some things easy to see and do, and others more difficult. Second, we are left with the question of whether and how pieces of the vocabulary might come to be captured by the political or other projects of particular groups or individuals. These two types of political effects are extremely hard to identify and differentiate. A great deal of argument within the field for and against various alternatives is pursued by associating an opponent’s ideas and proposals with political or other limits on the field’s potential. As we saw in considering the map of arguments about the field’s boundaries, claims of this sort are notoriously plastic and hyperbolic. If one were to take these arguments at face value, one might be led to think that most all the ideas
held by other people had blind spots and biases so grave as to take the profession straight to hell in a handcart.

Nevertheless, after mapping the discipline’s vocabulary, the temptation is strong to think that “something else is going on” besides good faith pragmatism to animate changes in the discipline’s preoccupations and arguments. It seems almost inconceivable that international lawyers should return again and again to the same set of ambivalent commitments as they struggled to respond to all the world’s various practical challenges. It seems hard to imagine ambitious and creative people repeatedly transforming their disciplinary vocabulary in such narrow terms and faithfully endeavoring to innovate, only to find themselves, in effect, being spoken by their professional vocabularies. It is easy to imagine that there must be some kind of “deep structure” at work here, guiding the hand of these hapless international lawyers as they repeatedly push for new thinking which turns out to be a rearrangement of their pre-existing ambivalences. Perhaps these argumentative patterns are the tip of an iceberg; beneath all this professional rhetoric, international lawyers are caught in a sort of disciplinary hamster wheel.23 I am convinced that there is much to

23. Both Martti Koskenniemi and I have written lengthy analyses of the field’s rhetorical patterns along these lines. I argued that the central disciplinary problem (how to have law among sovereigns) sets up a basic tension in the field between respecting sovereigns and governing them, between an autonomous law and an effective law, and between “hard” law and “soft” law. Neither solution would solve the problem, and all combinations seemed unstable. There was, I argued, a deep incoherence in the disciplinary project which “structured” doctrinal debates and historical transformations of the field. See generally INTERNATIONAL LEGAL STRUCTURES, supra note 1 (looking at public international law from the “inside” and focusing on the “relationships among doctrines and arguments, as well as upon their recurring rhetorical structure). Koskenniemi focused on a somewhat different tension in the discipline’s central project, between apology for the statist status quo and movement toward an internationalist utopia. See FROM APOLOGY TO UTOPIA, supra note 1, at 14. His formulation echoes my opposition between respect for sovereign autonomy and assertion of international legal community, but had the advantage of dynamism—one moved, he argued, repeatedly from apology to utopia. But since the field’s project was situated ambivalently between these modes, arguments for all possible doctrinal or institutional positions would be framed in this ultimately unhelpful way. The only accounts we offered of the movement forward were vague psychological insinuations that people would keep working to relieve the anxiety of the ambivalence, suggestions that the language of the discipline had an internal formal logic propelling it along, or the assumption that international lawyers

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this; people in professions do seem limited by the professional
languages they speak. Being a professional in a particular dis-
cipline does seem to establish a set of central problems, a view-
point, a collective project, and a set of argumentative possibili-
ties which are hard to shake off and which do have a dark side.
The difficulty is to identify these effects without repeating the
high-low hyperbole. One way to insulate oneself from that dif-

culty is to look for the bias and blindness that is common
across the field's lexicon and to identify the limits which can-
not be corrected just by moving to another spot on one or
another professional axis. The same might be true on a larger
scale across disciplines. If one locates a blindness common to
several disciplines, the chances that it could be corrected by
interdisciplinary projects of various sorts would be small—but,
then again, so would the chance that one is simply being swept
up on the hyperbolic polemics of interdisciplinary argument
about the nature and boundaries of this or that field.

C. A First Alternative Picture: The Limitations of Professional
Consciousness or the Dark Side of Expertise

For some years, I have been working from the intuition
that the discipline's store of professional commitments, prac-
tices and ideas have very deeply rooted blind spots and biases
that are not likely to be overcome by movement among
schools of thought in the field of international law, nor by bor-
rowing from the neighboring international disciplines of com-
parative law, international economic law, or political science.
My starting point has been the observation that international

had to propose reforms the way birds have to fly—it is what they do. A more
helpful visualization comes from Duncan Kennedy's work on the semiotics
of legal argument. See A Semiotics of Legal Argument, supra note 1, at 75. As
participants in the discipline "work" on problems and pursue projects of one
sort or another, they work on a "terrain" or "field" of available professional
arguments and techniques. Of those which are plausible, some are forgotten,
some are in fashion, some are hard to operate, and others come easily
to mind. These bits of argument and institutional fragments develop as they
are put in play, and participants criticize one another's projects and propos-
als. Although the overwhelming pattern here is renewal, there is also room
for the critical impulse. As people in the discipline pursue their projects
against one another, they do repeat and restore the discipline's major com-
mittments. From time to time they also do break out, and the process of
criticism eventually builds up to the point that faith in the broader edifice is
eroded.

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lawyers are largely very nice people, socially quite liberal and committed to making things better, and yet something about the way in which they conceptualize problems and possible solutions, including their best ideas about how to renew the field and their most critical observations about how things have gone astray, seems, nevertheless, to strengthen rather than weaken what seems inhumane in our current international arrangements. The blindesses and biases of the disciplinary vocabulary have been enhanced rather than eliminated by the current generation of enthusiastic renewalists. I have tried to set forth this sort of deep bias in the professional lexicon in more detail elsewhere, but let me give at least a flavor for what an argument of that type would involve.24

One way to describe the limited nature of the professional vocabulary would be to focus on the widespread tendency to disregard what seem background conditions and norms. One might identify across several generations of disciplinary innovation common, but mistaken, ideas—like the idea that international governance is separate from both the global market and local culture, or is more a matter of public than of private law—that narrow the sense among foreign policy professionals of what is possible and appropriate for foreign policy. Although we know professional disciplines have blind spots—some emphasize public at the expense of private order, governance at the expense of culture, economy at the expense of society, and law at the expense of politics—we hope these run-of-the-mill limitations could be corrected by aggressive interdisciplinarity. Unfortunately, blindness to the background can be maintained, even reinforced, in the face of interdisciplinary work. Specialists in all internationalist fields share a sense that governance means the politics of public order, while a background private order builds itself naturally through the work of the economic market. As a result, these specialists underestimate the possibilities for political contestation within the domain of private and economic law and overestimate the impact of globalization on the capacity for governance.

The specific effects of this sort of disciplinary limit will differ over time. Since the Cold War, international lawyers in the United States have come to share a diagnosis of the

24. See The Disciplines of International Law and Policy, supra note 2, at 62.
changed conditions for statecraft: international politics has fragmented, involving more diverse actors in myriad new sites; military issues have been tempered, if not replaced, by economic considerations, transforming the meaning of international security; a new politics of ethnicity and nationalism is altering the conditions of both coexistence and cooperation. Despite this interest in context, in expanding the boundaries of the field, in an anti-formal or embedded law, they share with their more formal opponents and with their predecessors across a century of disciplinary renewal a conception of what governance is, of the distinction between law and politics, and so forth, which have consequences for their assessment of today's political possibilities.

For example, international lawyers in the United States today overestimate the military's power to intervene successfully while remaining neutral or disengaged from background local political and cultural struggles. They tend to overestimate the technocratic or apolitical nature of economic concerns, including the independence of economic development from background cultural, political, and institutional contexts. A shared sense that cultural background can be disentangled from governance leads specialists to overemphasize the exoticism of ethnic conflict, as well as the cosmopolitan character of global governance. The result is a professional tendency to overlook opportunities for an inclusive global politics of identity and for working constructively on the distributional conflicts among groups and individuals that cross borders.

The proliferation of sites for international public policy that contemporary international lawyers embrace has a dark side about which they are more overtly ambivalent. They see the erosion of the state to be transforming the methods and objectives of public policy, eroding the ambitions of public law, expanding private law and private initiative, withering the welfare state under conditions of globalization, and inaugurating a democracy deficit, governance by experts, and technocracy. Law fragments political choices, spacing them out in bureaucratic phases structured by proliferating standards and rules. Political interests become factors to be balanced in an apparently endless process. In a technocratic private market, the locus for political choice is less opened up than it is rendered invisible. The idea of a “government” promoting a “program” has been replaced by the enlightened management of
prosperity, dramatically narrowing the participants whose interests are understood to be in contestation internationally—exactly as today’s international lawyers celebrate an opening of the policy process to civil society.

Mainstream international lawyers have greeted this trend with a tone of tragic resignation. Something called “globalization,” interpreted as a natural fact, has rendered public intervention in the emerging global market, whether for the environment, labor standards, consumer protection, or redistributive taxation, more difficult than it was within the welfare state. Although international lawyers often bemoan the weakening of traditional public policy levers in the face of newly mobile capital, their relative resignation contrasts starkly with their enthusiasm for a newly open international political process, as if enthusiasm about new participants were linked to confidence that they can now do little mischief. The link here is a familiar liberal one between democracy and a disempowered state and between strong markets and weak governments. The common theme is disempowerment of public law and the disappearance of background private and commercial affairs from the jurisdictional domain of politics.

My intuition is that we could reject both enthusiasm about the fragmentation of international political life and resignation before the shrinking ambitions of public policy in the face of a growing private sector. But this, a policy alternative, is extremely difficult to express or hear in the discipline’s conventional lexicon, regardless of the school to which one belongs. Rebuilding politics as an alternative to law, or developing a domain of contestation which is not law-not-politics, between-not-within states-nonstates, is not part of the discipline’s problem set. It is extremely difficult to articulate an opposition to anti-formal enthusiasm for a weak global governance system in terms which are not understood to revivify the state or disestablish the international market in the name of formal entitlements. But the welfare state often did entrench class, race, or gender privilege within its borders while preventing movement of people, ideas, and capital—all in ways which buttressed inequitable resource distributions across the globe and shrunk the global imagination. In some cases, a more technocratic politics has been a counterweight to the corrupt tendencies of mass politics and the capture of the welfare state by rent seekers of various sorts. And treating the state apparatus as
the *sine qua non* of decolonization has often entrenched gruesome practices in the name of sovereignty. My own suggestion is that resignation about the demobilization of a vigorous public policy indicates that, even as welfare states erode, the notion of public policy they exemplified is alive and well: public policy as territorial intervention by “public” authorities against a background of apolitical private initiative. This resignation refuses to treat as political, as public, and as open to contestation, the institutions and norms which structure that background market.

If we think of the private domain as political, it is not at all obvious that the current situation is one of fragmentation rather than concentration. Global governance may have simply moved from Washington to New York, from the East Side to Wall Street, or from Geneva or The Hague to Frankfurt, Hong Kong, and London. Where factors of production are relatively immobile, a locality or private actor may have more capacity to conduct global public policy than either the welfare state or the institutions of international economic law. The question, in other words, is not *whether* politics or *where* politics, but *what* politics.

International lawyers, in my view, should care less about whether the state is empowered or eroded, or whether the law is autonomous or embedded, than about the distribution of political power and wealth in global society. Because mainstream international lawyers accept that the political and economic results that flow from a particular system of private initiative are outside the legitimate bounds of contestation, they can be enthusiastic about a disaggregation of the state and the empowerment of diverse actors in an international “civil society” without asking who will win and who will lose by such an arrangement. As a consequence, the turn to political science too often illuminates the structure of the regime without adding to our understanding of its substantive choices.

Technocratic governance, the displacement of public by private and of political alignments by economic rivalries, and the unbundling of sovereignty into myriad rights and obligations scattered across a global civil society—all of this has transformed international affairs. Today’s leading international lawyers stress that this has often meant an opening of international affairs to new actors and concerns, a democratization and proceduralization of international relations, and
this may well be positive. But this transformation has also shriveled the range of the politically contestable, confirming as natural the geographic and economic distributions thought to be the inevitable consequences of "the market." Underestimating the political nature of private institutions and initiatives, many mainstream international lawyers have accepted the demobilization of policy-making as they have lauded increasing access to its machinery. The result is a professional class unable to develop viable political strategies for the world it has applauded into existence, ratifying the political choices that result from the arrangements of private power to which the state has handed its authority, while still celebrating the expansion of participation in an emasculated public policy process.

If we think about military power, the refusal to engage background norms and conditions is equally striking. Of course, the question of who can project force abroad remains important, undergirding patterns of trade, prosperity and impoverishment. The current generation of renewalists have provided us with a new security vocabulary of budget surpluses or deficits and hard or soft currencies rather than throw weights and silos. We are urged to reimagine missiles as missiles, their deployment determined less by Clausewitz than Hayek or Keynes, their military function shaped more by CNN than by the Pentagon. Like the disestablishment of the state, the economization of security has largely been welcomed by Clinton-era international lawyers. If the liberal peace hypothesis proves correct, the disaggregation of the state into a global market has left the world more secure and free to worry about prosperity. At the same time, economic security seems achievable through technocratic means, sound management, trade deals, and a smorgasbord of alternative dispute resolution mechanisms. Trade wars promise to be friendlier than real wars; they cost less and can be won by lawyers.

In the meantime, today's foreign policy professionals have drummed up all sorts of new uses for military machinery. During the Cold War, military interventions and proxy wars were hard-wired to the central problem of global security. Now they float more freely, drifting into limited police actions, humanitarian gestures, and stabilization at the periphery. The military has emerged from the collapse of the welfare state as the only bureaucracy broadly thought capable of acting success-

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fully, so long as the mission does not bleed back into economic or political matters. Seen this way, the military is available for a wide variety of technocratic tasks, but it should be protected from the quagmire of political or social engagement. The military will stabilize borders and prop up states precisely as globalization renders state institutions marginal sites for public policy. International lawyers anxious for a role in the foreign policy apparatus assert that our national interest now coincides with the stability of global governance for a global market. Consequently, the military should become a national contribution to that international order, for which the United States should be thanked and probably reimbursed. At the same time, nothing is very urgent. We could do it, or not. It is a moral question, a technical question; maybe we should send the Red Cross instead, hold a plebiscite, or enforce an embargo. We expect police action, an air strike, force by permission, all with limited objectives and clear avenues of retreat back to the cosmopolis.

The problem is this: our foreign policy professionals expect a technocratic cosmopolitan governance to have no stakes in local disputes beyond stability and, therefore, to deploy force in an unrealistically sanitary way, without political entanglement. But cosmopolitan governance does have stakes in local disputes. Although we should focus on securing prosperity, these new security concerns cannot be engaged blind to the social and distributational context within which they occur, anymore than by military force detached from economic cost and political risk. Economic security need not mean deference to the largest market actors. There are, after all, a number of possible markets, structured by different background values and distributive choices. Defending the stability of a political order necessary for investor confidence requires a set of political choices—both among states and groups (or classes) within nations, as among the transnational interests of labor, capital, women, or men. Moreover, it calls for choices among economic sectors with stakes in different patterns of modernization and among investors with stakes in different patterns of production, trade, and consumption. It is commonly said, for example, that a global market “requires” an emerging market to enforce the “rule of law” and to permit “transparency” and “predictability” in market transactions. It sounds very clean, egalitarian, and procedural, just like apoliti-
cal background rules. But the alternative is neither arbitrary nor chaotic allocations. Rather, it is a different, often equally predictable, allocation of resources, perhaps to local rather than foreign investors and to domestic oligarchs rather than foreign shareholders, or vice versa.

Such choices can only be engaged, can only be seen beneath the blanket insistence on technical “transparency” once the mainstream tendency to efface background cultural, institutional, or political structures has been overcome. In the recent Banana War between the United States and the European Union, there was a well-established institutional machinery to weigh the technical impact of one or another result on the balance between free trade and protectionism, to assess costs between American producers and European consumers. However, there was no mechanism to examine distributional costs between African, Caribbean, and Central American labor.

The Clinton-era optimism that military deployment can be disentangled from ongoing local political judgment and risk is rooted in the notion shared by contemporary foreign policy professionals, whether formal or anti-formal in their orientations, that cosmopolitan governance projects simply are about law rather than politics, about the universal and the rational rather than the local and the passionate. But it turns out that humanitarian intervention and international community policing also require engagement with the distribution of power among groups, along with a political vocabulary for addressing social and economic justice. It is as if the old coexistence mentality that left Cold War internationalists agnostic between liberal and totalitarian regimes had paradoxically reasserted itself as agnosticism between wealth and poverty, between this and that warlord, and between this dictator and those victims. But long-term economic security cannot be “managed” without attention to distribution, any more than long-term humanitarianism can be enforced without political choices. Humanitarian aid is one thing; humanitarian intervention is another. We saw the difficulty in Kosovo—in our odd oscillation between hands-off negotiation and pious criminalization. Both aspire to clean hands, but governance is a messy business, globally as well as locally.

Today’s international lawyers have also placed “culture” at center stage in foreign policy debates, and in many ways rightly so. Cold War ideological conflict obscured other differ-
ences and accentuated traditional modes of interstate politics. The medium for international affairs has become increasingly cultural: Coca-Cola has become more important than the Voice of America or the military establishment; CNN has replaced the embassy cable. Governance is less about norms or sanctions than communication and persuasion. Like the economization of security and the disaggregation of the state, this cultural turn suggests a model of international affairs more amenable to expertise, a matter of texts and images rather than either guns or butter. Within the cosmopolis, at least, “culture” is about persuasion and communication. Governance is a matter of deposits and withdrawals from a legitimacy stockpile in an “international community” where everyone speaks the language of missiles, messages, sanctions, and sanctimony. Outside the cosmopolis, however, for today’s international lawyers of whatever school, culture means a set of local and particularist commitments, altogether different from the secular, rational, and pragmatic communicative methods of cosmopolitan governance. Out there, religion and ethnic identity are back, not simply handmaiden to market rationality and reasoned patriotism, but to a range of more primitive, mystical, and irrational creeds.

My international law colleagues tend to take this two ways. Sometimes they reaffirm their cosmopolitan sensibility as a historic liberation from particularism. International economic law defends the liberal spirit of free trade against outbreaks of economic nationalism in the form of subsidies or protectionism. As nationalism “breaks out” or ethnic hatreds “reemerge,” internationalists struggle to keep the superego in charge. This cosmopolitanism is tolerant of (if disengaged from) cultural differences, particularly those involving commercial preferences (Germans like beer) or “private” and “consensual” family practices (female genital mutilation). Sometimes the internationalist takes the opposite tack, affirming cultural specificity, insisting on a defense of the West against the rest, or speaking for international civilization itself against all that shocks the conscience of mankind.

Either way, there is a problem. As international affairs come to be pursued in cultural terms, both a culturally demobilized “international community” and an artificially unified “West” will find it difficult to govern, for “governance” means participating in the struggle among cultural groups. Cultural
identities are at once more than preferences and less than iconoclastic alternatives to modern civilization. They require more than tolerance or exclusion. They must be engaged with more than the promise of participation in an eroding public life through minority rights and self-determination. Thinking about culture this way leaves the local and global groups and institutions which structure distributions of power and wealth outside the field of vision.

International lawyers in the United States today overstate both the contrast between local cultures and the global cosmopolis and the equation of cosmopolitanism with “civilization” and the “West.” Internationalists are neither outside culture nor simply “Western.” Cultures are not this solid or coherent. In fact, the most interesting issues arise within cultures, including within the culture of internationalism, between groups presenting themselves as cosmopolitan or secular and representing a variety of new gender, race, national, or religious identities. Of course, people do pursue political projects in broad cultural terms, promoting “North” or “South,” “Asian” or “Western,” the “Islamic” or the “secular,” and conflicts are likely to break out along imaginary boundaries of this type. But patterns of communication, migration, and economic development have also produced a Third World in the First and a First World in the Third and have proliferated “Western” sensibilities as well as nationalist resistances of various sorts in a wide variety of places. In short, our international legal establishment is fixated on differences between, just when differences within have become far more important.

The differences between men and women within both international and national cultures are more significant—also for foreign policy—than the difference between the international and national treatment of women or men, just as differences among men and women are often more significant than those between them. We need not set these commonplace observations aside when we think internationally. Differences among possible “market” economies or among transnational groups in a global market are more significant than an imaginary line between the market and public life or between North and South. Differences among groups within developing economies are more significant than relations between devel-
oped and underdeveloped economies, or between global and national markets.

In my view, our mainstream international lawyers across all schools have become too accustomed to thinking that we have a robust international political order with only the thinnest layer of law. But the reverse is more accurate: we have a robust process of global law and “governance” without a global politics. Real government is about the political contestation of distribution and justice. Governing an international order means making choices among groups—between finance and production, capital and labor, these and those distributors, these and those consumers, and male and female workers. Some of these choices will be national, of course—between Thai and Malaysian producers—but most will not. Development policy means preferring these investors to those and these public officials to those, not the technocratic extension of a neutral “best practice.” To make these choices we need a world that is open to a politics of identity and to struggles over affiliation and distribution among the conflicting and intersecting patterns of group identity in the newly opened international regime.

Putting this together, the suggestion is that our international policy professionals err when they sharply differentiate national culture and global governance or global economics and global politics. They err when they isolate politics within a shrinking public sphere, assume governance must be built while markets grow naturally, and treat security as a technical matter, disengaged from social and political context. Our international lawyers, whether formalists or anti-formalists, enthusiasts for sovereign autonomy or for a revitalized international community, have systematically underestimated the opportunities for engagement with the background worlds of private law, market institutions, and cultural differences. From the fragmentation of international politics, specialists have too readily drawn an optimistic conclusion about global democratization and a pessimistic conclusion about the horizons for public policy. As military issues have been tempered by economic considerations, they have become unduly sanguine about projecting military force abroad without local political engagement, while simultaneously overestimating the amenability of economic security issues to technocratic measures. They increasingly see military force both as an expres-
vision of a national interest unwilling to place a single soldier in harm's way and a technical tool for cosmopolitan governance able to be extended abroad on the unrealistic condition that the cosmopolis lives up to its promise to govern without political, economic, or cultural entanglement. Whether they are thinking about economic stability among the wealthier powers or development at the periphery, they think of the global economy in strangely depoliticized and technical terms. These misinterpretations often reinforce one another. Only after accepting the attenuation of public policy capacity in the face of globalization does it make sense to reinterpret security in economic terms turned over to technocrats indifferent to distributive concerns. The result is a decontextualized, deracinated, and depoliticized foreign policy amenable to international legal expertise.

By reinforcing the invisibility of background norms and private arrangements, mainstream international lawyers have taken important areas of political contestation out of the internationalist’s vision precisely as the disaggregation of the state makes these norms and institutions the most significant sites for international policy-making. They stress the naturalness of current distributions of global wealth and poverty, focusing our attention on participation in public structures precisely when questions of economic justice decided elsewhere become most salient. And they reinforce the stability of cultural identity at precisely the moment diasporic and hybrid experiences make contestation among and within cultural groups the central context for both politics and economics.

In my view, we could rethink the locus of international political contestation and public policy by invigorating debate about what have seemed to be the background rules and structuring institutions of private law, economic life, and local culture. The fragmentation of the state and the geographical expansion of the economy place local and global groups in complex and intersecting new relations. They invite a new global politics of identity. We should judge the global market, like the global political order, by the distribution it effects among today’s overlapping cultural, political, and economic groups. The issue is not how to repress or manage national, ethnic, economic, race, gender, or religious claims, containing them within the private or the national domain, but how we can engage them internationally.
It is possible to resist and question this sort of disciplinary blind spot. But doing so often requires departing the discipline's own vocabulary. Stepping outside the professional discipline in this way, moreover, will often mean stepping beyond the easy partnerships of well-established interdisciplinary projects. If international lawyers share a blind spot to global governance which is not cosmopolitan, rational, and detached, borrowing from the field of international relations will only help if that field is not also committed to the same idea about what global governance is and is not. Similarly, if international lawyers are blinded by the notion that markets grow naturally, while governments must be made, they will get no help from international economic law, a field that shares this central idea. Where international lawyers are limited by their tendency to think of culture as a local phenomenon and their own work as outside or after the particularities of cultural commitment, they will get no help from comparative law to the extent that discipline shares this vision.

This sort of reconceptualization is a messy and unfinished business which sidesteps the frame of the discipline's own problem set, vocabulary, and arrangement of schools of thought. Before looking further at how rethinking of this sort might be launched, however, we need to consider limitations on the discipline's imagination which enter not through the biases of its common consciousness, but through its capture by groups and individuals with projects other than generating good advice for the world of practitioner-beings.

D. A Second Alternative Picture: The Politics of Capture—Commitment, Identity, and the Struggle for Power

The limitations of background consciousness are not the only, nor even the most important, way in which a discipline comes to be politically limited, nor is it the best explanation of how a particular set of ideas comes to be dominant in the discipline at a given time. The process by which a disciplinary vocabulary is used and transformed—the process by which the opposition between positivism and naturalism is displaced by that between the Yale and Columbia Schools, or may come to be replaced by an opposition between transnational-legal-process-liberalism and identity fundamentalism—remains an extremely human one. Beyond the work of individuals respond-
ing to problems with good ideas, we have energy and passion
that can better be understood in the language of power and
group struggle. International lawyers have not simply been
trying to strengthen international law, harness politics to a
ready cosmopolitan vision, and make the world a better place
by offering their best advice to practitioner-beings of whatever
sort. They have been pursuing all sorts of other, more specific
individual and group projects in the vocabulary of disciplinary
reform or development. The room available for disciplinary
innovation remains hard to see without placing these other
motives and projects on the table.

Of course, it comes as no surprise that one set of ideas
within a broad disciplinary vocabulary can come to dominate
at a particular moment because people with that idea have in-
stitutional resources to devote to its implementation. If an
American administration pumps money into international in-
itutions to develop interest in the use of international law by
national courts, if a leading law school tenures scholars pro-
moting interest in national courts, if the American Society of
International Law funds the study of international law by na-
tional court judges, or if important journals have symposia on
relations among national judiciaries in various countries—all
of this will have an effect on the perceived plausibility of these
ideas. We are all familiar with the work of foundations—from
the Ford Foundation in the 1960s to the Olin Foundation in
the 1990s—inflacting the agenda of professional disciplines.
The international law discipline has its own odd lot of institu-
tions scattered about, often with some power to dispense jobs,
fancy certificates, visas, medallions, and the like. There are
more and less prestigious opportunities to publish, better, and
worse boondoggles. There are innumerable people trimming
their sails and stretching their wings across a professional life-
time in the hopes they might be properly situated and re-
garded to become one of, say, fifty candidates for a position on
some international tribunal or commission when the time
comes. If the United Nations sponsors symposia on “third
world approaches to international law,” or UNESCO publishes
books on the subject the plausibility of these ideas will be af-
fected. If the author of such a book becomes “President of the
World Court,” some people will read the book; some will reject
it; others may try to repeat the gesture; others may treat it as
spent. The ideas about international law popular at a given
moment in some countries are more influential than those popular in others simply because some countries are more powerful. The effects of educational patterns in the metropolis on thinking at the periphery are no less pronounced today than a hundred years ago.

Power in this sense—money, access to institutional resources, relationship to underlying patterns of hegemony and influence—is central to the chance that a given idea will become influential or dominant within the international law profession. We need look no further than the extremely disproportionate effect of ideas developed in the United States since the Second World War. Of course, it is always possible that the institutions which deploy money and other resources are themselves simply trying to solve problems as best they can and operate, like the practitioner-beings, as a sort of meritocratic check on the development of ideas. It may be, for example, that the American administration funds projects to develop national courts because they looked at all the ideas on display and picked the one most likely to work. It may be that U.S.-based ideas about international law have been more influential on the world stage since 1945, not only because American power gave them a hearing, but also because they were better ideas.

I am sure there is an element of truth here, just as I am confident that many people in the discipline are sincerely trying to solve problems as best they can, that they are learning from their errors and successes, and that this affects the direction of ideas in the field as a whole. In my experience, however, the power of money, institutional prestige, national resources, and so forth is also the object of intense competition among groups within the discipline, and it is not my experience that, at least in any short run, the results of that competition can be explained solely by the willing-out of pragmatic merit. For one thing, the individuals and institutions allocating resources of this type, like the practitioner-beings within the field, evaluate the merit of proposals in precisely the same vocabulary as is used by people in the field to propose them. For another, these evaluations have extra-disciplinary motives that feed back into the discipline, affecting the range of ideas among which they will choose. But even if we leave open the question of the relative weight we ought to ascribe to pragmatic individual learning, the meritocratic allocation of insti-

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tutional resources and other factors, we need some sense of what those other factors might be.

If we start with the discipline as a group of people, united by a common professional vocabulary, we immediately find the terrain within which they work riven by differences of all sorts among groups and individual international lawyers struggling not simply to promote their particular view of the appropriate disciplinary reform (adjudication or legislation) or school of thought, but also to express more specific projects and loyalties. Struggle among individuals and groups over resources—institutional resources, prestige, the resources of perceived plausibility, disciplinary hegemony—and the processes by which these resources are in turn allocated are better explanations for the dominance of some ideas at some times and for transformations in the disciplinary vocabulary than either the good faith pragmatism of innovative individuals or the meritocratic allocation of resources by practitioners and institutions external to the field. To understand this struggle we need a map of disciplinary groups parallel to our map of the disciplinary lexicon. As a starting point for such a mapping exercise, let me propose three basic sorts of group dynamics within the field of international law: those based on an affinity for ideas, those based on professional and personal identity, and those based on struggle for domination.

1. Common Intellectual Projects and Ideas: The Dynamic of Commitment and Aversion

At the most overt level, many people in the field are animated by their fealty to a set of ideas. They do come to believe in the importance of various intellectual propositions about law and international society, and they develop projects to promote these commitments. They try to get other people to share them, and they forego other competing ideas. And, of course, people come to believe that other ideas are not valid, important, or useful, and they develop aversions to projects that seem to express commitments with which they disagree. As particular doctrinal or institutional projects come to be associated with one or another of these ideas, those who share the commitment can sometimes be mobilized on its behalf, just as those who do not can often be mobilized against it. Sometimes groups sharing intellectual commitments or aver-
sions develop projects to promote these commitments. It is also common, however, for groups formed on the basis of a shared professional identity or political project to seek allies on the basis of these shared intellectual commitments.

a. *The Field as a Whole*

The most important idea around which international lawyers have organized themselves has been the discipline's own broad mission: to construct governance among states, to speak to power from a cosmopolitan point of view, and to promote a broadly liberal and rationalist frame for understanding international affairs. My sense is that international lawyers are unusual in sharing a commitment to so developed a professional mission. In seeking to recruit one another to projects of various kinds, international lawyers will often refer to a shared professional commitment to the rule of law among states, to the quite basic notion that international law is a good thing, and to the idea that there should be more of it. Of course, particular groups of international lawyers experience this commitment differently. A group could form around the project of ensuring that little in international law changes or that everything needs to be rethought for the discipline to survive. People might affiliate with others whom they recognize as sensibly weighing in against anything too extreme or as maintaining standards in the field by disciplining other participants who are sloppy in their work, just as they might express their commitment to the field by supporting anyone offering a "new idea" or anyone bringing youth or energy to the field.


Each of the positions mapped in the professional lexicon has, at one time or another, been the basis for shared commitment and aversion by some international lawyers. However important it may be that the sophisticated professional demonstrate competence to argue across the entire lexicon of positions, in every argument for or against particular reforms we find international lawyers—both practitioners and scholars—who are committed to the propositions they are advancing. These commitments can be rather short-lived, changing with
each round of arguments, or they may be lifelong intellectual orientations. A group of international lawyers might recognize an affinity for one another around the idea that what really counts for the future are courts rather than administrations, or that international law needs desperately to come closer to one of the field’s boundaries, thereby embracing a neighboring discipline (perhaps the world of commerce or the experience of people at the base). Other lawyers might recognize a common aversion to projects and proposals that blur the field’s boundaries, mixing law with politics. It is common to refer to other people in the field as “formalists” or “policy types,” as “realists” or “idealists,” and to strategize about how to appeal to them in these terms, even if most individual professionals hate being pigeonholed in this way and experience their own mind far more flexibly.

Despite the difficulty in translating the profession’s general terms decisively into specific doctrinal or institutional proposals—the frequency with which proposals are recast in quite different terms—international lawyers remain subject to mobilization in these general terms. It is far easier and more common to see international lawyers mobilized for a specific initiative—try Pinochet in England, for example—because it is thought to express a broad commitment for the field—embed law in national judiciaries, embrace the base, and so forth—than as the result of a nuanced assessment of what its effects will actually be on particular people or groups—for example, on Chile or on the British judiciary. It is not simply that they argue for trying Pinochet in these terms; they are often quite committed to the idea that they are right.

Although Protestants in various denominations would be hard pressed to state the doctrinal propositions which they “believe” and although they know that the arguments for high and low church modes of worship are both overstated and quite flexible, when they argue in high-low terms within a congregation about whether or not to invest in fancy drapery around the altar, the proponents on both sides will often experience themselves as intellectually committed to their position and resent the implication that they are expressing either a lifestyle/identity choice or a personal/factional interest derived from other concerns such as saving money, keeping up with the Methodists down the street, etc.
c. Schools of Thought: Shared Orientations, Default Positions, Heroes and Teachers

Although it is quite true that proclaiming one’s allegiance to a school of thought can be delegitimizing in a profession that values eclectic point-of-viewlessness, it is nevertheless common for professionals to recognize shared starting points with colleagues who we might loosely say are part of the same school, much as Protestants might recognize one another as Methodists or Presbyterians even if no one could state with much certainty the doctrinal differences officially dividing the sects. Schools of thought mark shared sensibilities and may provide the comfort of shared canonical materials, educational experiences, or mentors. In launching a project, one can seek allies in—at least write for the imaginary approval of—one or more of the established schools. It might be good to be supported by both Reisman of Yale and Schachter of Columbia, for example. Or, one might seek the blessing of both policy humanists, like Falk or Mendlovitz, and those who represent a more conventional and centrist doctrinal approach, like Henkin, Meron, or Damrosch. One can also launch an intellectual project by appealing to those who feel they do not fit within the established schools and for whom these labels seem old and worn out. There are senior figures available to ratify efforts of this type—Franck or Chayes—or whom one might select as an imaginary audience.

d. Subdisciplines and Neighboring Disciplines

International lawyers might share a commitment, or aversion, to the ideas of a particular subdiscipline within the field or thought to be present in a related or allied field. Many international lawyers become convinced that only the mechanisms of cooperation and governance developed in the subfield with which they have the most experience are really international law at its best and come to the broader field as apostles of the human rights reporting machinery, of the cooperative models of international environmental regulation, of the dispute resolution machinery of the law of the sea, and so forth. Others, of course, are allergic to anything associated with human rights, economic law, or the environment. Lawyers often develop a shared project to generalize the novelty they associate with their own subdiscipline, treating their
shared expertise as the discipline's cutting edge. This sort of thing is also common in those who have been immersed in the ideas of a neighboring field, such as political science, diplomatic history, or economics, or who take the influence of religion on international law particularly seriously. In launching a project, one might seek allies among those with similar interdisciplinary or subdisciplinary commitments. Commitments and aversions of this sort can be powerful bases for alliance and opposition within the field despite the fact that efforts to characterize subdisciplines or neighboring fields share with other of the profession's argumentative practices an enormous plasticity and tendency to hyperbole. However convincing as arguments about the nature of a subdiscipline they might be, they remain powerful bases for social connection.

e. Ideas Outside the Discipline Common in the Elites of Which Lawyers Are Part

At the same time, the discipline is intellectually and politically porous. International lawyers in different countries are influenced by the intellectual styles and political preoccupations of the national elites within which they work, and the long march of the tendencies operates in international law as elsewhere. When "historicism" is in in other disciplines, it will, in all probability, sooner or later come to be in in international law—likewise positivism, naturalism, Marxism, realism, feminism, interdisciplinarity, and so forth. At the same time, of course, one also often finds self-conscious disciplinary resistance to intellectual or political fashion. In the United States during the 1960s, for example, mainstream international lawyers self-consciously allied themselves with the most out-of-fashion strands of the post-realist consensus, constantly preferring rules to standards and principles to policy, in part as a strategy to make plausible their alliance with Soviet formalists in a project of coexistence. These intellectual commitments can generate projects which are only obliquely related to the field's own choices and materials, using international legal examples to promote public choice methodology or post-colonial literary theory. More popular ideas current in the international intelligentsia also find their adherents and opponents in international law. It is not unusual to find an international lawyer promoting ideas about the importance of the Internet,
the meaning of “globalization,” or the relevance of “chaos theory” to the field.

2. Identity Groups: The Dynamic of Affiliation and Disaffiliation

If we thought of a professional discipline simply as a group of people sharing a common vision, project, or professional vocabulary, and divided by intellectual orientations, commitments, and aversions, we would miss a great deal. The profession is also ridden with sociological and political affiliations both internal to the field and part of the broader social context within which international lawyers work and which are not experienced first as intellectual commitments. The field is animated by the seductive power of groups and individuals, as well as by the intense desire of many professionals to disaffiliate with other colleagues. Group affiliations based on personal and professional identity affect the distribution of ideas in the field as profoundly as do shared intellectual commitments.

a. Intellectual Groups As Professional Identities

Often, a professional group whose overt connection is a shared intellectual commitment or aversion becomes a professional identity as well, in exactly the same way cliques and gangs take on a life of their own apart from whatever shared commitments, grievances, or opportunities may have been the occasion for their establishment. Although many doctrinal or institutional projects begin as the work of one person and spread as that person persuades others to join the intellectual commitment, as they succeed or fail, such projects often take on a life in the social and libidinal economy of the profession as well. Some groups will seem “in” and some will seem “out” at particular moments. Some professional “voices” can seem more fun to speak with than others—more sophisticated, more daring, safer, more committed, more powerful, more abject. Maybe the Yale people have all the fun, the Columbia people are the really serious ones, or the formalists exude the pleasures of negation. We are all familiar with the charismatic power strong teachers or professional leaders can exert on behalf of their methodologies. People also can be attracted or repelled by doctrinal or institutional projects—building courts and working with nongovernmental organizations—because
they express particular professional identities: people who build bridges, like to argue, always look on the bright side, or like to feel that they are lighting a single candle.

b. Personality, Identity, and Style

It is sometimes helpful to think of these projects less in terms of their overt professional preoccupations than in terms of the lifestyle and voice they permit. Some international lawyers might have the project of being ornery or of being loners speaking from a secure perch on the margins of the establishment. People like this might recognize one another and share tips about the intellectual commitments or doctrinal projects most likely to give expression to their common identity. Others might want little to change in the world or might have the project of explaining to themselves why, seen through the clever lenses of professional acumen, everything is actually pretty good as it is. International lawyers can come together around a project for no reason other than that it seems to be what people “like me” are doing now, the nerds, the constructive types, the progressives, or simply the young. If you dress in black, maybe this year you are working for Treasury, perhaps even the IMF; Eastern European transition might still be appealing, but probably not human rights or refugee affairs. Just a regular sort of guy, well, maybe tradable permits for air pollution. If you wear a fancy tie, you might like international adjudication, all that nitty gritty jurisdictional crunching. If your suit is fancier still, perhaps commercial arbitration is your style. Or, just a second, is that a pocket protector? Then, maybe something like arms control or international prosecutorial cooperation is for you.

c. National and Cosmopolitan Professional Identities

Of course, there is a great deal of national and regional variation in the international legal profession. One often encounters international lawyers whose primary professional affiliation is to other American, European, Latin American, Asian, French, or Japanese international lawyers, or to lawyers from the same language group, i.e., French, Italian, or Spanish speakers, etc. These identities can sometimes be translated directly into intellectual commitments or political projects: that this or that national “approach” to international law be devel-
oped and expanded, making sure a "Scandinavian" or "Latin American" voice is heard. More often, however, the connection between national or linguistic professional identification and particular intellectual commitments and doctrinal projects is indirect. Indeed, it is more common, whatever the importance of underlying national co-identification, for international lawyers to avoid translating these identities into shared intellectual commitments or doctrinal projects. Even if everyone knows what a person is saying could not be more "typically American," "Canadian," or "Mexican," it seems important to the broader intellectual project of disciplinary cosmopolitanism that this observation remain unspoken. These identities remain central, however, to the organization of the field, as anyone who has ever worked in an intergovernmental or nongovernmental organization which crosses boundaries will attest.

Often differences between national traditions also come to mirror intellectual differences between schools of thought. It is customary for European international lawyers to think that all American lawyers are part of the Yale School, or for American international lawyers to think that Europeans are all rather formal and overly concerned with sovereign autonomy, just as it is customary to think all European international lawyers are rather too enthusiastic about the World Court, those from the United States a bit standoffish, and so on. Whether all this is true or not, once an international lawyer affiliates or disaffiliates with identity groups of this type, his or her intellectual commitments and doctrinal projects can be inflected by this identification. International lawyers from the United States have taken any number of attitudes towards the International Criminal Court, for example, but it is difficult to understand what motivates those who support and those who denounce it without reference, among other factors, to their own relationship to their identity as international lawyers in the United States at a time when the official U.S. position is strongly at odds with the official views of many other nations.

Many international lawyers seem strongly identified with their own deracinated, confused, multinational, or refugee identities. Indeed, many come to international law with a strong desire to deracinate themselves or to make contact with the exotic. Others seem determined above all else not to notice the details of their own personal history or see interna-
tional law as a route to assimilation with a cosmopolitan establishment elite in their (often adopted) country. Some share patriotism and may have come to the international profession accidentally. International lawyers often affiliate with others in the field who share their national or cosmopolitan identity and can be attracted to projects and intellectual commitments that seem to express or reinforce this shared self-image.

d. Disciplinary and Subdisciplinary Identification

Professionals are often more ready to affiliate with others sharing their disciplinary subspecialties and to disaffiliate from those in other departments than they are to share whatever intellectual commitments are characteristic of that specialty. An international economic lawyer pursuing a doctrinal or institutional project might find it easier to find allies with other trade law experts even if the project has nothing to do with any particular insights or commitments shared in the subdiscipline. The same is true for lawyers working in a particular institution or professional setting. Lawyers in private firms, government agencies, nongovernmental advocacy groups, and law faculties identify with one another professionally based on the sense that they understand what grading is like, what it means to bill a client, or how the only people who really know what's what are in government, in the private sector, or wherever, even if these commonalities bear no relationship to the project itself. Professional identification with particular subject matter areas can operate similarly—international lawyers specializing in telecommunications, the law of the sea, human rights, or the environment—as can immersion in neighboring disciplines—economics, political science, and cultural studies.

Identifications of this sort can be the basis for intellectual affiliations and projects, ensuring that the “voice of the State Department” or of “the practicing lawyer” is heard, just as they can mark different emphases within the discipline’s broad lexicon—more or less interest in rules or courts, more or less skepticism about the possibilities for an international “community,” and so forth. And sometimes these institutional affiliations are the basis for bringing other concerns and commitments into the field—advocating more or less attention to financial, humanitarian, military issues, etc. The affinities among a group of people in a congregation can easily start as a
matter of shared intellectual commitment—all low-church types—and then develop into a subdisciplinary allegiance—it turns out many of these people are in the choir and then everyone in the choir comes to be a low-church type.

e. Generational Identification

Like other fields, international law is also often divided by generational affinities, people who remember the Second World War, people who worked in European reconstruction, people who were affected by Vietnam, people who grew up with computers, and so forth. Generational identifications can be long-term—associated with generational cohorts in the broader society—or the short-term identifications associated with the ebbs and flows of students or younger collegial cohorts in particular professional organizations with much more rapid turnover. People who served on a journal board together, who remember the company before the IPO, who were here in the last administration, and so forth, can identify with one another and be available for recruitment into common projects and intellectual commitments. Maybe everyone got into the choir when they had young children in the youth group on the same night, and grew up into the role of low-church choir people together.

f. Mentor-Mentee Relations

In international law, as elsewhere, among the strongest sources of professional identification are the links built through mentor-mentee relations. It is common in the literature to see the mentor-mentee relationship as a temporary one between two people, in which the mentor is an established figure in an otherwise undifferentiated profession, and the mentee is a younger person situated more liminally. In this model, the relationship is a temporary exchange. The mentor offers information and guidance to the profession in exchange for the satisfaction of feeling needed and wise; the mentee offers a temporary fealty in exchange for entrée. Mentoring ends when the mentee has successfully navigated a rebellion against the artificial centrality of the mentor to enter the broader profession and survives, if at all, as a sort of nostalgia. The mentor-mentee affiliation is less an exception to the general conception of professionals operating in an undifferenti-
ated profession, articulating their ideas solely for the eye of the practitioner-being, than it is a means of explaining how the “point-of-viewlessness” of mature professionals central to that conception is reproduced. Even in this model, however, mentor-mentee relationships can be powerful vehicles of identification for the development and propagation of ideas and professional projects. Access to mentees is one of the most important resources which institutions put at the disposal of professionals pursuing projects of various sorts.

In my own experience, moreover, the mentor-mentee identification is more complex and enduring than this conventional model of facilitated entrée acknowledges. Professional communities are filled with complex, often enduring, relationships between mentors and mentees that rarely have their origin in this sort of exchange of entrée for status. Nor do they often end smoothly in a move by the mentee to unaffiliated assimilation to the profession. Sometimes they arise from the persuasive power of ideas and are maintained as disembodied associations of individuals who agree about propositions. More often they originate in, and are sustained by, more personal factors. Sometimes, mentoring affiliations can be well described in competitive, familial, or religious terms—mentees selecting and nurturing mentors as a career strategy; mentors competing for the best mentees in a professional struggle for influence or leadership; or mentor-mentee diads reproducing family roles or experiencing themselves as cults.

My own sense is that these frames underestimate the extent to which mentor-mentee relations have their own dynamic, stronger than the individual ambitions out of which they are often thought to arise or the persuasive power within the broader community of ideas which they are often thought to instantiate. Like ethnic, class, gender, race, religious, national, or other strong identities within the broader political field, mentor-mentee relationships present, at a micro level, a somewhat independent field of life, desire, affiliation, and alliance between the rationalist community and the ambitious individual. The mentor-mentee relationship, moreover, is usually a multiple one, in which the mentor relates to the mentee as one among many possible mentors and the mentee as one of many possible mentees. The mentor-mentee link will often be more important symbolically for the affiliations it suggests laterally, with other mentees or mentors. Mentors can be se-
lected as a means of deselecting other mentors, of allying with other mentees in a common project. In launching projects or proposing intellectual commitments, it goes without saying that it is often possible to find allies and enemies by tracing the links among mentors and mentees.

g. Social Identities from the Broader Society

Like other professionals, international lawyers participate in all the various race, gender, class, and other social divisions that divide their society. It may be that, for a period, the discipline as a whole will be experienced as aligned with one or another group—for example, WASP men in the pre-war period—just as it will be aligned with particular political or intellectual tendencies. In the post-war period, international law's broader intellectual and political contours were importantly inflected by the sensibility and contribution of European, often Jewish, refugees in the States. If we look at the field in the United States today, there is a striking split among international lawyers under forty—white men largely interested in economic law and foreign policy on the one hand, and women and people of color largely interested in human rights, immigration, or development, on the other. Of course, there are all sorts of exceptions, but there are now within the discipline well-developed subgroups composed of people who experience their professional identities as international lawyers to be inseparable from their identity as women, Latino/Latina, African-American, gay, or lesbian. These affiliations can be more or less formal, can be sharply focused around particular intellectual trends and political projects, or can simply be inchoate affinities that can be brought to bear in building alliances to pursue other projects.

3. Pursuing Projects: The Will to Dominance and Submission

The discipline is more than groups of people with substantive commitments or professional identifications. The patterns of intellectual commitment and aversion and of professional affiliation and disaffiliation might be thought to provide a context or terrain in which professionals can pursue projects which lead them into relations of dominance and submission with other individuals and groups. New thinking emerges not simply as the result of a disinterested persuasion effort among

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identity constituencies in the field with different commitments, but also as the result of competition among constituencies in and outside the field for authority, recognition, prestige, and resources.

Many such projects are simply the extension into action of an intellectual commitment or professional identity. Others express a will to power that arises outside of these common professional characteristics. And the discipline has a will to power of its own, for itself as much as for its vision. The idea that there should be more international law, or that things would be better if more people viewed governance as international lawyers do, is at once an intellectual commitment, a basis for professional identification and affiliation, and a disciplinary will to power. The same could be said about schools of thought, tendencies within the field, affinity groups with projects, and, of course, individuals. It is common to speak of the translation of ideas and identifications into action as a "political" effort, in which individuals and groups seek "power" within the field and within their societies. We might also term the distribution of commitments or identifications "political," at once an effect and source of "power." The differentiating element here is the struggle to dominate or submit.

In mapping the influence of power on the distribution of ideas in a field, it can be helpful to separate these three dimensions—commitment, identification, and domination—for they can operate independently of one another. In the simple case, a person who seeks to make a project out of promoting international law seeks allies among those who share an intellectual commitment to this idea and those who share professional identification with others in the field. He or she then seeks to dominate those within and without the field who are less enthusiastic about this project.

But we can easily imagine more complex cases. A person might seek to translate his or her commitment to an intellectual proposition—building courts is better than building administrative agencies—into action as a project by seeking the support of others with whom he or she shares other intellectual commitments or professional identifications. And one might have a will to dominate arising outside the domain of shared commitments and identifications. As in any field, there is an entire range of projects that arise out of ambitions other than solidifying professional identities or translating intellec-
tual commitments into action. We are all familiar with professionals whose project for the field dissolves into support for their own expertise or employment. As in any field, there are people with a stronger or weaker will to dominate who seek out intellectual commitments and professional identities around which to express it.

Moreover, although it is less often discussed in these terms, there is also a will to submit that will affect the distribution of ideas and resources in the discipline at any given time. The discipline as a whole may see itself paying fealty to other powers—to politics or economics, for example. International lawyers may find congenial the role of servant to statecraft, voyeur of power, chronicler of politics, or even powerless critic of power, and might be altogether uncomfortable being thrust into the driver's seat. And individual international lawyers may seek out the leadership of others in the profession, regardless of the particular commitments or identifications their projects entail, for the experience of following. International lawyers often seem to oscillate between a will to rule and abjection in the face of what they interpret as power. Looking back on the field over a century, the disciplinary will to disengage from power is striking. On the other hand, international lawyers coming into the field after 1980 often experienced their elders as having submitted far too happily to a kind of disciplinary detachment from the foreign policy apparatus, and opposition to this willed submission became a force of its own, producing an intense energy to perform as macho and entitled to rule.

a. Projects Arising from Shared Intellectual Commitments or Professional Affiliations

These are the most common and visible projects undertaken in the field. Indeed, efforts to persuade other international lawyers, whether practitioners or scholars, to pursue a given doctrinal or institutional reform, to view things from the perspective of a given school of thought, and to reconceptualize the field as a whole along particular lines, can become projects for groups of individuals who seek alliances and deploy resources beyond the persuasive power of their commitments and affiliations. Some commitments and affiliations will come to be embodied by people or groups with rather strong
wills to dominate or to submit. The effect on the distribution of ideas in the field can swamp the effect of the idea's persuasiveness, plausibility, or usefulness.

b. Interpreting and Implementing the Field's Own Political Projects in a Context

In a given political context, some international lawyers may share an interpretation of the field's broad mission or a sense for its urgency more strongly than others and seek allies in a project of implementation. Such a project will often relate to a national elite in some way—getting the Senate to take international law more seriously or reforming international law so that it can be taken more seriously by the State Department. Other international lawyers, even those who share the intellectual commitments or professional identifications of those pursuing such an effort, may not be interested in such a project. Perhaps they are more interested in the extension of international law abroad or in normative development, or perhaps they are more comfortable marginal to national political power. Nevertheless, such projects will often seem broadly nonpartisan, at least on their surface capable of appealing to all international lawyers. At the moment, for example, the American Society of International Law, which has always carefully avoided taking political positions of any kind, finds it unproblematic to mount a project to extend compliance with international law by the American judiciary.

c. Political Projects of the Left, Right, and Center

International lawyers also participate in a range of political projects outside the field of international law on the basis of their expertise and seek allies in the profession for these efforts. Such projects can be associated with the broad party politics of the society. International lawyers in the United States have been active in supporting both the Democratic and Republican Parties, as well as in promoting particular factions within them—Rockefeller Republicans, Stevenson Democrats, and so on. In different countries and different periods, international lawyers may go in and out of government, may be a steady bland presence or in the vanguard of winning and losing political forces, and may be associated with the full range of political forces—liberals, conservatives, national socialists,
socialists, communists, etc. In the United States, international lawyers have generally aligned themselves with national political movements that share liberal and progressive political commitments. They could largely be placed, at least over the last generation, within a narrow band of liberal internationalist political sentiment associated with one strand of the Democratic Party. But there are also centrist Republicans and a wide variety of mavericks or political outliers from both the left and right.

In pursuing political projects, individual lawyers often seek support among those in the field with whom they share this political ambition as well as among those with whom they share intellectual commitments and professional affiliations of other sorts. The match between these political projects and the commitments/affiliations sought to be mobilized on their behalf can be close or far. A group of people in a church might suddenly get agitated about nuclear weapons proliferation and seek to mobilize the congregation to do something about it. They will certainly find a way to wrap the effort in the general vocabulary of the denomination (for example, “God is love,” “Peace on Earth,” and “Love thy neighbor”), and they may also try to interest friends in the choir or other people with children in the Sunday school. They may seek out the congregation’s anti-formalists, who are committed in general to an embedded church and might well be persuaded to embed it here.

Sometimes political projects of this type line up with schools of thought. It seemed for a time that the Yale School supported American Cold War interventionism, while the Columbia School did not. But “schools of thought” in the field do not exist as parties capable of resolving to support one or another political project of this type. Although the broad debates dividing the field—formalism/anti-formalism, sovereign autonomy/international community, and so forth—often seem to have a vague political tinge as “left,” “right,” or “center,” the profession is not intellectually structured on a left-right axis. The intellectual and the political domains are linked more loosely than that, through the projects pursued by individuals and groups in the field sharing a set of commitments at any given time.

For some time, it seemed that those associated with Wolfgang Friedmann and the Columbia School were far more in-
tensely committed to political projects of decolonization and development in the Third World than either the Yale School or leftover positivists and naturalists. They devoted far more energy to promoting the United Nations, as well as to forums or programs within the U.N. system oriented to development. Scholars associated with neo-positivism contested the political characterization of their politics as "right-wing" or disinterested in development, offering instead an alternative set of less institutional, more formally normative projects. As the luster went off the United Nations in the 1970s and third world scholars laid claim increasingly to formal normative commitments, the claims of the neo-positivists to offer a left-wing political project came to seem more plausible.

If we look at international law in the United States, it might make more sense to organize it in terms of the political affiliations of its members than in terms of either its internal professional associations or intellectual commitments. At the moment, American international lawyers on the right tend to be formalists about American sovereign prerogatives and strict interpreters of the commitments of foreign powers, particularly to respect property rights and the prerogatives of international institutions, but very expansive and policy-oriented when it comes to interpreting restrictions on U.S. power abroad. American international lawyers on the left are more likely to be rule-oriented when it comes to American obligations and far less worried about the formalities of multilateral or international institutional initiatives. Political affiliations of this type contribute to the argumentative instability of the profession's intellectual terrain and to the general sense that everyone is an eclectic or post-intellectual pragmatist. Although the association of political projects and positions in the discipline's own vocabulary can change dramatically, as we saw in the transformation of the formal/anti-formal and sovereignty/community axes after the Second World War and again in the last few years, they remain strong bases for political affiliation among people within the profession.

d. Individual Projects, the Politics of Self Promotion, and the Politics of Identity

Individual international lawyers often will become motivated to pursue quite specific projects, often simply projects of
self-promotion of the sort common in any field—particular international lawyers promoting ideas and affiliations with which they are associated as a way of rising in the field. Sometimes promotional projects of this sort are undertaken by individuals in the name of a broader identity category—for example, women, minorities, young people, post-colonials, Canadians—or on behalf of one or another victimized group—for example, refugees, victims of human rights abuses, and so on.

We also find individual international lawyers launching campaigns for particular political initiatives: campaigns to assist refugees in particular places, to liberate East Timor, to promote women’s rights in the field, to promote an appreciation for economics by international lawyers, to restrict free trade, or to support labor rights. In the United States, some international lawyers have urged the Democratic Party to support U.N. funding more wholeheartedly, opposed the death penalty, supported a reduction in arms expenditure, opposed the Vietnam War, urged intervention in Bosnia or Kosovo, supported reconciliation with Cuba or recognition of Palestinian statehood, and so forth. In pursuing these projects, international lawyers often seek allies in the field and promote intellectual commitments within the field that will facilitate their project. If the American judiciary seems more likely than the Congress to support refugee rights, international lawyers with projects of refugee protection may seek to push the entire field to emphasize the role of national courts in implementing international law, may seek allies for this project, and may distribute resources toward those who adopt this general intellectual commitment.

In this context, it is important to note that international lawyers have quite different attitudes about their relationship to the foreign policy establishment. In some countries, the link between the international legal community and the foreign ministry is quite strong; in others it is quite weak. In the United States, where the link is rather weak, individual international lawyers still differ dramatically in their sense of their professional role vis-à-vis the State Department. Some can be counted on for a passionate legal defense of whatever foreign policy initiative comes out of Washington, others for a more dutiful or even begrudging effort to explain how a reasonable person might have concocted such a policy and how it might be legally defended. Some international lawyers are perennial
critics of U.S. foreign policy; others are simply not interested in the issues on which foreign policy largely turns. For others, their attitude will depend a great deal on which political party controls the executive. Political efforts of all these types will influence the distribution of ideas and professional affiliations within the discipline.

4. Commitment, Affiliation, Domination, and the Distribution of Ideas

We are now in a position to supplement the traditional account of the distribution of ideas in the discipline which focuses rather exclusively on their usefulness. We began with the constraints of the professional lexicon itself, the language within which professionals pursue projects. Professionals also embellish and transform the discipline's basic arguments in the pursuit of projects for which they seek allies and resources. We might think of the discipline as a kind of force-field animated by some combination of these three elements:
There is a common disciplinary mission, viewpoint, and vocabulary, and international lawyers share a range of commitments and aversions to particular intellectual propositions within that vocabulary. International lawyers affiliate and disaffiliate from a variety of professional identities, some of which express commitments of the field and some of which are provided by the context of the work or the broader social context. Lawyers pursue projects, efforts to promote intellectual, political, or personal objectives, deploying their expertise in the discipline’s vocabulary, seeking alliances with others on the basis of shared commitments, aversions, or affiliations. The status of forces among particular ideas and particular modes of criticism or reform will often depend on the distribution of forces among groups whose projects, commitments, and affiliations seem implicated.

Over time, projects come and go, and individuals in the field will be more or less engaged in projects at any time. Some people are rarely energized; others flit from one project to another. As projects go in and out of fashion, affinity groups form around them. People often recognize one another in the field as someone else “who realizes how important the environment really is,” or “who understands what political science has to offer us,” or “who has standards.” Participating in the field for many people means strengthening the cohort pursuing a common project. This might be done by promoting one or another idea for renewing the field and might result in a new status of forces among schools of thought. Although a project might well be associated with a school of thought (“all the policy types are trying to downplay the United Nations”), it is more likely that people pursuing a project will attract participation from international lawyers across these differences. At any moment, for people pursuing a project, the differences among schools of thought may seem far less salient than the question of who is an ally in the project. New thinking in the field could emerge out of the struggle among groups of this sort, as people pursuing a project evaluate broad reforms for their distributional impact on their project as opposed to others—for example, will embracing economic law be good or bad for people interested in the Liberal Peace hypothesis? Differences of a more interpersonal or professional sort will naturally also affect the distribution of energy for particular efforts to promote new thinking.
This way of thinking about the development of ideas in the field places in the foreground the activities of groups and the operation of what seem rather overtly "political" motives and concerns. This is a different enterprise from figuring out what the political blind spots or biases of the field's vocabulary might be. In this exercise, we are mapping the projects professionals pursue, rather consciously in most cases, in order to determine how they might affect the balance of ideas in the field at a given moment. The disciplinary vocabulary might have all sorts of other political effects, both on its members and on others within or outside the broader intelligentsia, which are byproducts of this activity—it might legitimate some exercises of power in society and delegitimate others. International law might be put to a wide variety of uses beyond those for which international lawyers have energy or commitment. As I said earlier, it is quite rare to find an international lawyer who pursues a project of genocide, pollution, or war, but it is altogether clear that the doctrinal and institutional machinery of international law can be, and has been, quite useful to many people pursuing projects of this sort. It could well be that an unacknowledged bias in the professional lexicon could strengthen their hands. An effort to map the politics of international law would need to be far broader than the one I am pursuing here. The effort here is to understand the role of common projects and commitments on the process by which new ideas come to the field and by which some ideas come to dominate, others to be dominated, in the disciplinary lexicon at a given time.

The success and failure of professional projects will affect the distribution of critique and reform within the field, as well as the broad ability of the field to build a consensus or experience itself to be in a period of anxious disagreement. The field's broad mission or sensibility can, in a given time and place, be captured by a narrow project, commitment, or affiliation. A particular project may become so associated with the field that those with an aversion to the project will be available for new thinking that criticizes the field as a whole and may push the field toward a period of contestation and anxiety. The field of international law in a country may become preoccupied with international adjudication, human rights, or development and may become exclusively the terrain of government lawyers, of men, or of political scientists. When this hap-
pens, those with an aversion to these commitments, affiliations, and projects will be available for criticism and renewal of the broader discipline. If, for example, an entire generational wave of reform becomes associated with support for the Democratic Party, hostility to Vietnam, or hostility to the Third World, it may be impossible for those in the field who share a commitment to an alternative political project to avoid criticizing the field as a whole. In the late 1950s and 1960s, the Yale School successfully came to dominate the introduction of realism and policy science into the field and to associate it so firmly with Cold War politics that almost no one in the field who did not share those politics exploited the methodologies they introduced for thirty years. Criticism unmoored from reform—efforts to reimagine the field as a whole—will be more common the narrower the range of affiliations and political projects with which the field identifies. At least for the moment, energy for broad criticism of the field will be easier to mobilize among affinity constituencies whose own projects seem to be excluded, not by the overt terms of the discipline’s reform agenda, but by the projects of constituencies who have come to dominate the discipline’s agenda.

D. International Law Today: Anxiety and the Search for a New Consensus

The contemporary bid to establish a new consensus in the field and end the post-Cold War period of anxiety is not only a transformation of the field’s professional vocabulary. It is also a product of various projects of affiliation and commitment by individuals and groups within the field. The transnational-legal-process-liberalism proposals for a new consensus are all interesting, and many of the specific reform ideas being advanced as exemplars of this new vision may be great ideas. Given the plasticity of the justificatory vocabulary within which they are being proposed, I am confident that many could be implemented without consolidating the broader vision, just as the broad rearrangement of schools of thought being advocated could be achieved without implementing any of the particular reforms. Nevertheless, there are all sorts of alliances between those attached to particular reforms and these general ideas: often those opposed to the ideas oppose the associated reforms and often reform opponents also oppose the
broad ideas. What is needed is a more basic understanding of the patterns of commitment, affiliation, and ambition within which these debates are occurring. Let me illustrate, at least in a loose way, the sorts of influences and engagements which would be part of such an account.

Scholars bidding for mainstream status customarily present dissensus in the field as “methodological.” Although this formulation takes the emphasis off the struggle among affiliations and ambitions in the rearrangement of the field’s intellectual terrain, it has a certain benign pluralistic feel. Given the arrival into the legal academy of various “methods” for studying law (for example, feminism, policy science, political science, cultural studies, law and economics, public choice, literary theory), it is not surprising that methodological diversity would show up in international law. As long as the goal remains building the machinery of international governance, the measure remains pragmatic use value, and the more methods are brought to bear, the more tools we are likely to have to pursue our disciplinary project. Of course, it is customary to recognize that these methods sometimes carry with them loose political affiliations, but these differences simply contribute to the field’s pluralist or eclectic breadth.

As someone resisting the consolidation of this new mainstream vision, I have resisted this “competing methods” interpretation of the situation. In my own experience, international lawyers are not blank slates, committed to a broad disciplinary objective and searching around for a useful method to get there. They are people with projects, commitments, and affiliations. They seek and reward allies, punish enemies, and contend with one another as if their differences mattered, both for the field and for themselves. In such an environment, accepting the “dueling methods” interpretation places the imaginary “practitioner-being” in control of the outcome—whatever comes up with proposals that are adopted for their usefulness has not only succeeded in dominating the discipline’s mainstream, but deservedly so. Since it seems to me that struggle for the commitment, affiliation, and dominance of the practitioner-beings in all of us is part of what is at stake in the clash of different projects within the field, it would be foolish to cede the victors so delicious a recipe for self-justification.
Proposals for a new consensus in the field uniformly present themselves as broad efforts to help the field achieve its broadest objectives, rather than as the projects of particular individuals or groups. They are written that all professionals of good sense might share their commitments and affiliate with efforts to realize their implementation. Still, it is easy to distinguish among these scholars those with one or another more specific commitments or affiliations. There are people who want to promote international economic law as a field, affiliate with law teachers in other "tougher" fields, reinterpret international economic law as a somewhat public or constitutional legal order that is amenable to at least some socially responsible regulatory initiatives. Being seen as a person who knows about economics or who consorts with law and economics scholars might well advance such a project. Similarly, there are people who want to redeem public international law as a possible partner in managing American foreign policy. To make it a worthy participant in statecraft, they feel they must demonstrate a certain hard-boiled understanding of power, and a rapprochement with the political scientists who have staffed the Democratic Party foreign policy establishment might be a good strategy.

The same sort of interpretations might be made by those outside this new mainstream, among those who insist upon the formal entitlements and autonomy of national traditions as expressions of the field's own good sense. There are people who want to redeem the possibility of a third world nationalist position, who are drawn to affiliate with people involved in scholarly enterprises drawing on all sorts of post-colonial literary, historical, or cultural theory. This is so not because of a clear idea about how such a "methodology" will advance international law, or even their particular project, but because the milieu seems a productive one for pursuing the project, filled with people with whom they seek affiliation. And there are people whose deracination propelled them to international law, only to begin working out their identity as Latino, Asian, Jewish, gay, and so on. We might recognize scholars opposing transnationalism-legal-process-liberalism in the lexicon of "public choice" as vaguely right-of-center people, morally upright, tolerant, but scandalized by the messy compromises and seamy deals of political life, who would be horrified by the idea of taking power in either a struggle of identities or a lib-
eral governance regime within the discipline or the society. Rather than become participants in a “regime,” such a person might prefer to replace the corrupted world of politics with a more sensible and rational expertise. Where humanitarian values need protection, better a nice clean rule or right.

The most significant projects, affiliations, and commitments moving the international law profession at the moment are generational and political. Both are easy stories to sketch. The generational account picks up as the long engagement between my own generation and our predecessors’ ends. The displacement of the Yale-Columbia axis by the axis of support for and opposition to transnational-legal-process-liberalism is an event in the development of ideas. But people in the field easily recognize it also as a generational phenomenon. The 1960-89 generation was an extremely coherent one that entered the field early in the Kennedy administration and only began to lose its grip after the elections of Reagan and Thatcher. Since the end of the Cold War, its members have retreated with remarkable generosity and grace or have reinterpreted themselves as participants in a new generational wave of renewal and engagement for the field. The leaders in the field are now largely my contemporaries, whose formative experiences in the field came after the disappointments of 1968 and Vietnam. At the same time, the field is expanding rapidly, and a much larger and potentially more diverse generation is coming on the scene, led by people very much like the editors of this symposium issue.

Generational change within a field is rarely smooth. A field can be dominated by people who understand themselves to be part of one generation for thirty or more years and they can quite suddenly be displaced by another group of people who might differ in age among themselves by as much as twenty years, but still see themselves as a single generation. In American international law, this has been extremely pronounced, providing an opportunity to examine how a generation coalesces, announces itself, and displaces its predecessors. The presence of a potential third generation offers the opportunity to think about something equally complex—what strategic possibilities are open to an age cohort which is not yet formed either as junior members of my middle generation as it comes into power or as the avant-garde of the generation which will displace us. The interest of a student editorial
board in "new thinking" can be set against this backdrop—to put it starkly, "new thinking" for today's students can mean either submission to a disciplinary common sense just being consolidated or a far more uncertain effort to think beyond where my own generation has gone before we have even gotten there.

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

It was only in the 1960s that a methodological and political consensus settled on the field, the internationalist liberalism of people like Richard Falk, Louis Henkin, Oscar Schachter, Tom Franck, Louis Sohn, and Abe Chayes who consolidated a new mainstream way of thinking against the back-
drop of the Yale alternative. In a way, the old public international law simply shipwrecked on the rocks of legal realism and policy science. The new generation hitched their wagons to the foreign policy of the Kennedy era and to an American-style liberalism with an internationalist and cosmopolitan perspective, at first promised by Kennedy's New Frontier and then by Hammerskjöld's revitalized United Nations. As the liberal consensus on American internationalism dissipated, the field became increasingly marginal, isolated from both the cosmopolitanism of Republican free traders and the increasingly interventionist Cold War liberalism of the Democratic Party, in Vietnam and elsewhere. Their commitment to the formal rules necessary to criticize American hegemony or build a regime of coexistence with the Soviet Union isolated them further from American legal scholars in other fields eagerly embracing the world of "policy." There was Ford, there were spurts of energy in the Carter years around human rights and the law of the sea; and then came Thatcher and Reagan and Bush.

Nevertheless, the disciplinary hegemony of the Hammerskjöld liberals in the field of public international law was surprisingly complete and long lasting. It also had an enormous echo outside the United States, in many ways more than here at home for generations of young lawyers from the Third World, as well as our industrialized allies and colonies, looking for a safe space between socialism and the embrace of the American empire. The international legal scholarship of the 1950s was simply swept away. After 1960 it was routine to assert that all those who had come before had missed the most significant political developments: superpower convergence, decolonization, the emergence of development as a central substantive issue, the existence of cosmopolitan space between the superpowers. The field had been in urgent need of renewal, had suffered from an unhealthy methodological extremism when the practical problems of a newly interdependent world called out for an eclectic via media. The discipline's marginal status discouraged dissident voices within the field, even as it established a practice of professional dissidence. A call for "new ideas" in 1959, rather than 1999, would have had many takers—all proposing one or another version of the liberal humanism which would then dominate the field for a generation. Their program would have rekindled the
modernist and cosmopolitan recipes of the 1920s, enthusiasm about international administration, a chastened collective security, a critique of sovereignty, an embrace of political science expertise, and a call for renewal.

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

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

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

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

What we have is a generational cohort proposing a new synthesis, animated by a set of overlapping political projects which it is pursuing vigorously. The members of this cohort have sought out allies among those sharing one or another of their intellectual commitments—to interdisciplinarity in general, the importance of economics and political science—among international lawyers, and among those in neighboring fields who have felt international law had somehow gone astray, needed a cold, hard look, a reengagement with policy science. They have cultivated friends among those of their elders who chafed most under the dominance of the Yale-Columbia axis—scholars at New York University, Harvard, Michigan, and those in the West. They have found support among those drawn to their intellectual and professional style, their hip sensibility and apparent political with-it-ness. They have mobilized institutional resources in universities, law firms, government. They have worked to mobilize professionals in a number of subdisciplines to generate operational examples of their general ideas—environmental law, refugee affairs, arms control. They have written broad scale reinterpretations of the field’s most basic doctrines and institutions—judicial review, the power of the security council, the role of courts, the function of international institutions. They have sought out and supported mentees and followers, have appealed to the desires of others in the field for energetic leadership. They have presented their suggestions for doctrinal and institutional reforms to one another’s practitioner-beings in the hope of confirming adoption. All this is quite normal; had they not done so we might have wondered about the usefulness of their ideas or the depth of their professional commitment and competence.

This emerging professional consensus has been criticized in numerous ways by people within and without the field and by international lawyers from the United States and elsewhere. Critics have made efforts to mobilize constituencies in opposition, just as the transnational-legal-process-liberalism proponents have sought to do on their own behalf. Some of this
opposition comes from people proposing other ideas to reorganize the field, some from people opposing one or another of the pet projects of the transnational-legal-process-liberalism cohort. This opposition effort has generated two broad types of criticism, neither of which strikes me as terribly convincing, but both of which have been rather effective tools for mobilizing people in the field to opposition.

Some opponents have focused on the broad ideas themselves—the anti-formalism, the emphasis on an embedded civil society rather than sovereign autonomy, and so on. The idea here is to demonstrate that something about these ideas is bad for the field as a whole—will drag it too close to politics, blunt its claims to universalism, ignore the continuing importance of states. We might think of this as an effort to develop a “high” church position opposite the new low church of transnational-legal-process-liberalism. Where they are anti-formal, be formal; where they emphasize community, focus on the continuing value of sovereign autonomy. At the same time, these voices are very concerned not to be mistaken for an even more formalist identity or for human rights fundamentalists. The result is a vigorous, if rather familiar, debate. The difficulty, of course, is that once one places these schools on the broader spectrum from the political-science realism/formalism opposed by the new mainstream through the sovereign autonomy/identity fundamentalism opposed by the new dissident voices, the difference between the mainstream and the counterpoint seems less and less one of principle. Indeed, it would not be surprising for mainstream scholars to find it difficult to understand how exactly what the dissidents are proposing actually differs from what they are proposing, or to hear their dissent as a willful misreading of mainstream intentions.

In arguing about the proper limits of the field—its relations with commerce, the base, politics, and so forth—the new high and low church have developed roughly parallel and opposing accounts of how only their solution can save the field’s broad project. The idea here is to find some element in the opponent’s broad vision that invalidates the entire project. Doing so often takes the form of associating the ideas of the transnational-legal-process-liberals with a set of political consequences and affiliations. Thus, one might argue that anti-formalism about international law is inexorably associated with American hegemony or imperium—it was in the 1950s and it
is today. In an extreme version, one might say that the Nazis were anti-formalist, so were the colonialists, so it is just bad stuff. The problem with arguments of this type, of course, is that anti-formalism has had a quite varied political career in international law—associated with the left in 1919-39, with the right in 1960-89, and today's transnational-legal-process-liberals are quite insistent that it is the perfect set of ideas for a moderate center-left program.

A second strand of criticism takes the emphasis off the ideas altogether and focuses on the association of the transnational-legal-process-liberals with a variety of reform efforts dear to the American political establishment which these critics oppose. Thus, it is argued that the new American international lawyers are somehow (and the “somehow” is often rather mysterious) implicated in a broad American plot of domination. Now, it is true that these people want to participate in American governance and in America’s participation in global governance, but being part of a right-wing conspiracy of global domination could hardly be further from their own intentions. There is no question that the transnational-legal-process-liberal group has been assisted powerfully by this association with the American political establishment in their struggle within the American intelligentsia, just as they have often paid a cost for this association abroad. But this association should be understood and, if you like, opposed as an alignment, an alliance, an association, rather than as an entailment. For one thing, these people understand themselves to be strident opponents of American adventurism of this sort, themselves critical of American pop-cultural dominance, firmly empathetic to the developing world, supportive of the ethic of human rights everywhere, yet sensitive to the difficulties of cross-cultural understanding and dialog. Theirs will be a regime of differentiated rights and responsibilities; that is the whole point. It might turn out that their ideas, nevertheless, had been captured by practitioner-beings with completely different agendas, and they had become the unwitting accomplices in a set of political initiatives that they did not understand. But, this is extremely difficult to demonstrate. The fact that the ideas originate among Americans who want to participate in American government does not, at least to me, suggest by itself that the ideas are tainted, anymore than the fact that some idea arose in the colonial encounter taints it always in all contexts.
Americans sometimes come up with good ideas, as do colonialists, and ideas turn out to be rather flexible as they migrate about. Nevertheless, a rather successful opposition to transnational-legal-process-liberalism has emerged that blends these two strands of criticism. These people are Americans; they propose to strengthen the American foreign policy machinery and participate in it; they are anti-formalist about international law and willing to relax commitment to universalism. They are either evil or unwitting accomplices in a project of hegemony.

In my own view, criticism of this sort is at once too sweeping and too wedded to the discipline’s own vocabulary. As an intellectual matter, given the instability of the professional lexicon, the effort to uncover political biases in a new school of thought requires going beneath the charges and countercharges of the high and low church. And the effort to connect ideas in the discipline to political projects requires a more sociologically focused inquiry into the projects of domination, affiliation, and commitment by which ideas are captured by one or another group at a given moment. This will probably require more attention to the particular context and political motivations of the idea’s proponents. Efforts to identify the dark side of disciplinary common sense and its capture by groups are important but seem unlikely to be accomplished by a silver bullet. Rather, opposition of this type requires an ongoing performance and counter-demonstration, an effort to uncover and make visible the blind spots and political projects firmed up on the more neutral vocabulary of disciplinary renewal and pragmatic persuasion. The audience for this sort of demonstration is not an imaginary panel of practitioner-beings, but the actual audience of people in the field who might be mobilized one way or the other, including, quite crucially, people such as the editors of this journal who are just starting out in the field. The distribution of ideas in the field will be determined, in large part, by the relative success of various groups and individuals in mobilizing younger people to seek career paths thought to instantiate one or another set of ideas about where the field should head.

My own hope is that as the field rushes to embrace a new consensus, there will remain some who will keep doubt alive. It would be better, as I see things, if we could wallow in disensus and uncertainty a while longer rather than rushing to de-
velop either enthusiasm for the transnational-legal-process-liberal project or for its opposition. Both seem unpersuasive except as they have come into power in the field through political activity and alliance, and both seem to share the blind spots and biases of the discipline's professional lexicon. It has been my project while this new consensus has slowly emerged to open a space for a range of critical initiatives and alternative voices: to seek alliances, affiliations, power, to permit the development of ideas that did not fit the lexicon of high and low. The point was not to develop an all-points criticism of transnational-legal-process-liberalism, nor to propose an alternative, any more than it was to support this emerging mainstream project. The idea is simply to sidestep the preoccupations that generate this sort of transformation in a disciplinary vocabulary which needs to be rethought in a far more daring way.

I have come to this project myself partly by following the energy of younger international lawyers who seem charismatic and whose political and social projects I admire, partly by long-standing aversion to many of the projects of other international lawyers, and skepticism about the commitments and projects of the field as a whole. My intuition is a critical one—that in some way the international legal profession has often made the very things it claims to care most about less likely, that the professional discipline is part of the problem, and that the established professional argumentative practice in the field repeatedly places its speaker in a posture of bad faith—overestimating small differences and over-promoting broad arguments about which one is also professionally ambivalent. This is an intuition, I am afraid, that applies equally to those of my generational cohorts now proposing a new political and intellectual synthesis for the discipline, as well as to their most notable opponents.

Unfortunately, this remains, after close to twenty years of collaborative work, a very not-worked-out intuition and a comparatively unsuccessful project. We have started to figure out how the discipline participates in keeping a terribly unjust international order up and running, even as it seeks with great passion to be a voice for humanitarian reform and even as it renews itself constantly to be more effective. But we are just getting started. The difficulty is to figure out how to get beyond rearranging the discipline's own points of reference. The difficulty, however, is not only an intellectual one. Trans-
forming the discipline, just like reinforcing it, is a project which requires the mobilization of affinities, the building of groups, the staging of controversy, the announcement of opposition and seductive appeals of recognition, engagement, play. In my experience, thinking against the box that the field has built for itself is a performance in a particular context, a project of affiliation and disaffiliation, commitment and aversion, dominance and submission. On that score, I can offer some experiences and some enthusiasm for a range of efforts percolating among international lawyers just getting started in the field.

IV. CRITICAL PERFORMATIVITY: NEW APPROACHES TO INTERNATIONAL LAW

A professional vocabulary for criticism and innovation is the backbone of an international lawyer's expertise. As a result, the field is a gold mine of criticism and new thinking. As international lawyers have criticized one another's proposals for innovation and renewal, they have generated a set of structured argumentative oppositions around which they arrange themselves in schools of thought. They have been remarkably resilient in adapting this vocabulary to new conditions and in rearranging its terms to express generational and political differences. Work in the emerging transnational-legal-process-liberalism school provides an excellent example of the skillful deployment of this critical vocabulary, and so do most efforts to oppose it.

The vocabulary in which these debates are carried on has limitations: a recurring experience of overstatement, an extreme plasticity, a range of blind spots and biases. Deploying this vocabulary seems conducive to a kind of professional sectarianism, the repeating narcissism of small differences. Still, I am sure that if one wants to oppose or promote a scholarly initiative or reform proposal, the professional vocabulary can be extremely useful, no question. One might have such a project for all sorts of reasons, based on affiliations, commitments, ambitions, which seem thwarted by the project of people on the other side of a given scholarly initiative or reform proposal. One might even have such a project because one believes the arguments one uses to promote it, overlooking their hyperbole and plasticity. The professional vocabulary offers a

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form of ritualized combat through which all sorts of projects and groups compete with one another, legitimate and delegitimate one another, the parties speaking with various degrees of sincerity.

In training to be an international lawyer, it is compulsory to develop facility in rehearsing the classic disciplinary lexicon, mastering the skill of characterizing your adversary’s position and your own in these terms. It is also necessary to have a broad familiarity with the range of possible broad orientations one might have to the materials represented by the contemporary schools of thought. It is no longer thought wise to be an adherent of a “school of thought” in any formal sense—that seems a bit unsophisticated, too preoccupied with unanswerable philosophical questions. But one is expected to “feel more comfortable” in one approach or another, to develop a professional voice that is recognizable and relatively consistent. In a similar way, to be a Protestant is not to have mastered the dogma of a particular denomination, but to be able to frame questions in high/low terms, to be able to argue effectively with those who are higher and lower, all the way to the extremes which are off the map (Catholicism at the high end, and secular humanism at the low end), and to have a loose orientation to a position on the continuum of high and low.

Although there is plenty of room for disagreement and the entire terrain on which schools of thought have differentiated themselves can be rearranged, the basic questions set for the field a hundred years ago remain its central preoccupations. International lawyers seem tacitly to agree that if there were to be a significant debate about foundational matters, we know what it would look like and where it would end, in a ritualized stalemate from which we would flee to pragmatic program building. Nevertheless, to describe these debates as stalemates does not eliminate them. One is, after all, a Protestant precisely to express a stalemate between the high church of Catholicism and the low church of secular humanism. So, also, to be an international lawyer, rather than a diplomat or domestic lawyer. To be an international lawyer is precisely to struggle with the appropriate blend of sovereign autonomy and international community and to worry about the appropriate degree of formality in international norms. That there is no clear intellectual solution to either issue simply makes
the practical effort to re-stage the debates ever more urgent. And these debates are re-staged from time to time, if only as an exercise in consolidating the professional consensus. Indeed, to teach international law means to stage these debates in such a way that students will flee from them into the field as eclectic pragmatists. In these re-stagings, people with a critical impulse who are really willing to make those old arguments again can be extremely useful.

The mandatory nature of this vocabulary does have a down side, particularly if you are worried about blind spots and biases which are common across the disciplinary lexicon. If criticism cannot be expressed in the classic terms, as an opposition on one of the field's known spectrums of disagreement, it often just cannot be heard. Treating other issues as foundational, setting aside inquiry into the classic debates somehow simply does not compute—like being a Protestant and not having attitudes about why one is in a church at all and about why one is not in the Catholic Church. It may be difficult to figure out how to renew a field run aground between the Yale and Columbia approaches, but there is a vocabulary for doing so. One rearranges the arguments about the relationship between anti-formalism and an international community or civil society, and so forth. It may be difficult to figure out how to oppose a disciplinary initiative as intelligent and well-established as the emerging transnational-legal-process-liberal mainstream. But there is a disciplinary vocabulary for doing so—one stresses formal entitlements, the autonomy of actors, the centrality of identity, and so forth. The problem is more difficult if you have the intuition that renewal like this does not go far enough in some way, that important disciplinary blind spots are being repeated and reinforced, or if you are interested in weaknesses shared by professionals on both sides of these conventional debates. The elaborate disciplinary vocabulary of criticism and renewal will be a problem, in short, if you want to think outside the box.

My own search for "new thinking" in the field of international law arose from an intuition, a critical impulse, that the discipline's routine efforts to renew itself had reinforced rather than eliminated blindness and bias. I felt a strong identification with the field of international law, with the promise and premise of international governance, with the perils and possibilities for cosmopolitan rationalism. But I wanted to
think outside the professional lexicon, and I wanted to build
the institutional and social conditions that could make doing
so possible and enjoyable. My project has never been to dis-
cover a better answer to the field’s own enduring questions,
nor was I looking for a better way to deliver international law’s
historical wisdom to the established powers. I was pretty ag-
gnostic about particular doctrinal and institutional reform ideas
within the field, and I never could get very excited about ques-
tions like the relative merits of treaty and custom or whether
we should look to domestic courts rather than international
plenary bodies for normative development. I took it for
granted that the field of international law expressed the con-
sciousness of a significant group of legal professionals who
somehow seemed part of the foreign relations establishment.
They seemed to care about things I cared about, but I had the
intuition that they had more often been part of the problem
than the solution.

The problem is that frame breakers are generally either
interpolated back into the disciplinary vocabulary or placed
outside the field. I wanted to be in the field, but I wanted to
develop and make known an intuition about the field’s limits
and dark side that seemed impossible to speak in the discipli-
nary vocabulary. Marxism once offered a challenge to the dis-
cipline’s frame that could almost be heard. But for interna-
tional law, either Marxists turned out to be positivists, or they
were treated as having ideas and interests that do not quite fit
the field. Other potential schools which do not lie easily
across the continuum from formalism to policy, which do not
see building law-not-politics between-not-within-states as their
central project, have elicited a similar reaction. Critical legal
studies types have been interpreted as Marxists or McDougal-
lites, or they have been thought simply incomprehensible.
Feminists have been interpreted as Grotian Eclectics inter-
ested in “issues of concern to women.” Perhaps they think law
is an ideological cover for patriarchy, which is certainly all very
interesting, but how does that help us build public order in a
fragmented world of sovereign states?
A. Some Common Misunderstandings About Extra-Vernacular Projects

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

Perhaps most frustrating has been navigating the disciplinary demand for usefulness. It is conventional to distinguish new thinking which leads somewhere, which helps the field, which is linked to useful reform, and new thinking which does not—which is, depending on who is speaking, more daring, or irresponsible, theoretical, or, perhaps, simply “more radical.” It is certainly true, in a discipline where practically everyone calls for “new thinking,” that some people will seem to do so with a shorter-term reform horizon, will question less of the existing field, will harness their criticisms more directly to concrete reforms. Other people will see it as an act of brave disaffiliation to refuse all this, to place rather more of the discipline under question, to forego the demand for immediate reformist suggestions. This can be an important distinction to be sure, but throughout the discipline’s history, and even in my own life, it is often very difficult to untangle these threads. If your project is to step outside the disciplinary vocabulary for reform, however, or if you neglect to orient your work to the imaginary practitioner-being, then you will be understood to be “more radical,” not useful—or useful only if you succeed in becoming a generational innovator who reorients the field’s lexicon for usefulness. In the early 1980s, a friend of mine expressed this thought when he exhorted me to try to become “the McDougal of your generation.”

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

Conventionally, criticism and reform within the field’s vocabulary are thought more than compatible; they seem to be phases in the great cycle of progress. After the critical shock troops clear the ground, the reconstruction teams march in. Progress has two moments—open up the situation, then indicate a direction to thrust forward. The moment of criticism might be enacted as a moment of “theory,” of innovation by a really smart person, that of reform one of “practice,” the rubber making contact with the practitioner-being. But sometimes, these impulses seem less harmonious; the shock troops want to go further; the reconstruction effort wants to start rebuilding sooner. Unaccountably, even perversely, the reformers find the critique directed against them. Their demolition completed, the critical troops find themselves unemployed, outside the discipline, perhaps honored for their historic contribution, and retired. Theory, once celebrated as harbinger of the new, seems old-fashioned as the discipline moves on to pragmatic action. What once were allies become tense camps.

Of course all of this does not happen in a strictly linear way. It is much more mixed up than that, and people in the field are often criticizing and proposing at the same time. At any one time, some people will focus more on criticism, others on renewal. A discipline might go through periods in which many participants agreed that the project should be one or the other, in which critics get all the evil parts, say, while modest reformers keep inheriting the kingdom. In international law, the uneasy interaction between these two related impulses has long been a central drama. When international lawyers frame
the field as stuck, they call out the critical troops. When it seems they know already what the problems are, they will figure the discipline as ripe for movement forward to reform. When we call for "new thinking," in some ways the most interesting question is what to think about criticism which overspills the banks of renewal. Is this what we mean by "new thinking," or is this just an excessive byproduct of the field’s own commitment to reform, the distracting work of people who do not know when to stop?

I have never thought the distinction between critics and reformers was very helpful. Everyone is doing both. The distinction I have been interested in is between people operating within the disciplinary lexicon and people pursuing projects of criticism and reform outside it. In any event, I don’t think we have a good metric for identifying things that are "really" critical or reforming. These are matters of contestation and desire, decided as much by audience reaction as by the script or the players. Creating the performative effect of having been critical, innovative, or reforming is an alchemy of the professional situation, the projects and affinities of other actors, the seductive powers of the perpetrator, the narrative desires of the audience, and more. Sometimes the most banal or commonplace observation generates all the heat of critical insight; at other times, the most outspoken criticism reinforces the routines of the status quo.

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

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

It is very difficult to explain that one wants to involve people in intellectual work without rushing to renew or rebuild the discipline. At least not right away. But that is what I have tried to do. I know that there is something odd in my effort to see innovation and criticism as performances in a professional genre, to focus on similarities across successive waves of innovation, and to foreground the projects of individuals and age cohorts. For one thing, by sidestepping appeal to the practitioner-being, all this can seem to sidestep a more important question: what about reality, real problems, real solutions, real conditions, real statecraft, real politics, and real suffering? There are real problems, urgent ones—Timor, Palestine, AIDS, land mines, poverty. We, as experts, technicians of the establishment, citizens, need better tools to address them. If international law is weak, has too few tools, and has fallen on hard times, it needs us. If renewing some old ideas that have lost their way will help, excellent. If international law needs to be set aside in favor of something else anyone has to propose, that is fine too.

This may be absolutely correct, and I am all for renewing the discipline where doing so seems to have any chance of making things better. For sure. My idea would be for us to set aside the distinction between people who want to make the world better and those who don’t and not to confuse the attitude we have about the field’s lexicon with our attitude about the whole world. Let us imagine that everyone in and around the field hopes for global improvement. Even the people who are not in touch with their inner practitioner-being. It re-

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mains important to know if disciplinary renewal, for all its promise and for all its benefits, may also narrow the range of tools in the toolkit, might on balance be a bad thing, for us, for society as a whole. We might then distinguish people who think a great deal of the field, the entire lexicon, would need to be changed to make the world a better place, and those who think rather less will be necessary. And we could distinguish those who thought very much in the current international arrangement called out for transformation from those who think things are largely fine, however passionate they might be about the need for particular changes. And we could distinguish those whose innovative projects translated easily into a largely continuous disciplinary practice from those whose projects do not.

To help keep myself oriented outside the channels of professional habit, I have been most interested in criticism which does not start life as the back formation of a reform proposal, criticism which risks a ground-clearing from which we would not know just how or what to rebuild, which escapes the watchful eye of the practitioner-being. We should try to remain struck by the continuity in the field’s characteristic gestures of internal reform and at the range of questions and topics which seem to remain off the screen however many times the field brings itself to its knees by criticism and self doubt and then struggles to rebuild. Like other disciplines committed aggressively to progress, international law shares something with the fashion press, forever instructing us that this year’s designs are “about” comfort, elegance, and the body, reframing as dowdy what last year seemed sophisticated.

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

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

B. The Situation and the Audience

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

For a start, this means developing a strategy about the audience and the situation. It might be just my personality, but it has always seemed clear to me that my own project would likely have little resonance among either senior figures in the field or among those of my own generational cohort who are most concerned about strengthening international law's role in the establishment. Perhaps if my project had been to renew the international legal vocabulary so that the discipline could return to power, the situation would be different. Of course, the elder figures most wedded to the earlier particular arrangement of schools—at Yale or at Columbia—might still not have been interested. But senior figures who were a bit off-sides in that debate, who were on the look out for new energy, who yearned for someone to promise the return of their disciplinary vocabulary to the national intelligentsia's lexicon of savvy thinking, could be expected to be supportive. And it would not be that difficult to forge an age-cohort alliance: this is the new thinking we need if this discipline is going to get us back to power. Something like this seems to have been part of the situation and strategy for the transnational-legal-process-liberals as they sought to reorient the field after the Cold War.

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

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

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

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

It is not all rebellion, of course. These young people also hope or expect that their choice will be redeemed by experience and that in the future everything will be international. There might be something chic in being a cosmopolitan internationalist, jetting around and seeing the big picture. There might somewhere be a spiffy career as well. But it is also not corporate law, intellectual property, or commercial law. As a result, just becoming an international lawyer can feel like the expression of a broadly critical impulse. By comparison, all the rest of law seems too parochial or insufficiently humanitarian. At least in the United States, the field has been associated with pacifism, with critique of the American empire, with the progressive movement, with the left, with law as an instrument of social change, as well as with an insistently pluralist and cosmopolitan attitude towards the national political and legal culture. The mainstream players in the field announce themselves as "the left" in the national political culture, suggesting that if you are critical of their vocabulary, you must be pretty wacky indeed. This places demands on the field, demands that the field live up to personal and professional choices which have already been, or more likely are in the pro-

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cess of being made. These demands are familiar from other self-consciously humanitarian professional disciplines: poverty law, public interest law, increasingly all fields of public law.

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

But the mainstream discipline has a pretty good strategy for filling this bill. International lawyers constantly reiterate—to one another, to themselves, to anyone who will listen—a belief in historical progress towards internationalism. They are also committed to the idea that in a global world, the broadly liberal, cosmopolitan, and rationalist sensibility they embody is, and will be, virtue. This commitment lies so deep that to argue it explicitly, as has been tried from time to time, comes across as vaguely vulgar and unnecessary. To ensure that the field will be ready when the world gets international, to be sure that its practice will rightly express a cosmopolitanism appropriate to that future world, to be sure its commitments will be recognized and embraced once the establishment understands the direction of history, all those in the field must meanwhile—and this is the crucial step—work nonstop to align the field with progress. If the field is virtue's future, work on its updating can only be a sign of grace. And so the good work of the field becomes work on the good field, paddling out, aligning the board, adjusting our weight, watching the water, waiting for the wave.
As a result, the classroom situation is not neutral. It is against something (the field up to now), it is for something (reforming international law), and it is waiting for something (the historical progress of internationalization). There is certainly a critical element here—whatever has kept the field marginal in the past must be rejected, and urgently. But there is a limit to this impulse. The point is to support international law and get it back into the mainstream, to become, as the world progresses, ever more the voice of the international establishment or “community.”

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

There is no doubt that this impulse to affirm their professional identity by renewing the field sometimes makes international lawyers willing to risk and challenge the broader establishment, as it sometimes makes them creative in their approach to practical problems. Affirming the international lawyer’s position, viewing the elites from a higher, more cosmopolitan and rationalist point of view, speaking to them from this great height, can be a challenging political intervention. But more often it makes the field timid, careful to preserve its own (now marginal) status in the name of a future boldness.
Nothing could be more conventional than suggesting that new thinking is the responsibility of the young. We have gotten things this far; if you want something new, you will have to think it up yourself. How this plays depends in part on the distribution of projects and powers in the field at a given moment. Take generational change, for example. Near the end of a period of consolidation, a discipline can look stuck, and can have trouble promising the pleasures and powers of savvy thought. A student with an extra-vernacular project looks out at a relatively unified field of ideas stretching from those just a few years older through to those nearing retirement. When I started in international law in 1980, there were few people in their twenties, thirties, or forties working in the discipline, and things had been intellectually stable for quite a time. In such a situation, new thinking is not that difficult to get going. Often, many of the field's own familiar tropes have long lain dormant and need only be revived. There was also a lot of new thinking lying around in neighboring legal fields that had not yet been imported. For someone with the project of disciplinary renewal, a certain kind of will to power and the project of opening the field to criticism for, say, apologetic participation in an unjust status quo, it was not that difficult to figure out what to do.

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

We might look at the situation from the point of view of the student editors of this journal, who have a set of strategic choices ahead. Some calls for renewal, of course, have a predictably overblown feel, and much in this year's particular fashionable rhetoric will blow over. But some of these new vo-
cabularies will stick, and some of the current leadership’s re-
form ideas will be implemented. International law might well
migrate from administration to adjudication, from litigation to
alternative dispute resolution, and from multilateral standard
setting to tradable permits. In a way, the field demands that
young international lawyers select among the various renewal-
ist projects on offer. Renewalists of my generation all need the
energy of today’s enthusiastic students to ride their ideas
across the track from new thinking to established wisdom.
Will the field be renewed by economics or political science?
By adjudication or alternative dispute settlement? Or by trade
law, or human rights? In an important sense this journal’s edi-
tors and people like them will decide.

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

Precisely because the debate about “new thinking” in in-
ternational law has placement consequences, however, our ed-
itors will want to proceed cautiously here. Students of interna-
tional law, like other law students, learn a lot in the effort to
select a career path and find a job. There are lots of strategic issues, not unlike those that face practicing lawyers across their career. Which fields of law are hot? Will they still be hot in five, ten, twenty years? Which way is the practice moving—larger or smaller firms, regional or national or global practices, one-stop-shopping or niche markets, etc.? You don’t want to become an antitrust specialist because it will offer interesting ways to think about public regulation of the market just before they stop enforcing the antitrust rules for ten years or stop seeing it as an arena of public regulation. Similarly for litigation, environmental law, and land-use planning. When I was in law school, the chic alternative to firm practice was management consulting; ten years before, it had been government; ten years later, it was investment banking. Now it’s Internet start-ups and stock options. Imagine you had settled into the field of security studies with all its terrifically sophisticated vocabulary about throw weights and elaborately modeled computer games in 1985, just before the end of the Cold War pushed the silo counters firmly to the margin. Or imagine that you had gone off to bring law to the developing world in 1965, shortly before disillusionment with the American empire and the impact of liberal law on economic development dried up all the grant money.

In international law, it is not simply a matter of selecting a domain of practice with staying power. If one goes into international law as a commitment, signing up for a collective project to build a better international governance structure, the viability of the commitment will depend a great deal on what happens to the sector one selects. The experience of a career—the buzz, if you like—will vary dramatically depending on where one is working. Imagine you had gone enthusiastically to the U.N. Secretariat in 1963, full of excitement for changing the world and riding the wave. Downer. Well, will Amnesty International or Greenpeace be part of a broad project of disciplinary renewal in five years? Is CNN a better bet than the State Department? Citibank better than the World Bank? Will the daily work in human rights advocacy continue to feel connected to a broader aspiration to transform international society, or will it become a narrow specialty? We might think here of poverty law, refugee law, or legal services over the last thirty years—the career is still there, but the buzz has altogether changed.
A similar thing happens at the level of ideas. Much of the professional work of international lawyers in the United States participates in a polemic about and in favor of international law. Selecting among the renewalist options on offer is not merely to select a domain of practice; it is also to select a polemical style that will become part of one's professional identity. Will you be the sort of international lawyer who is always trying to get norms adopted or rather trying to work loosely with whatever principles seem to be lying about? Either way, you will connect better with some people in your office and less well with others. It is quite common in practicing environments for people to feel bonded to one another because they share an implicit understanding about what is hot and what is not. Imagine a human rights organization that has participated in one multinational U.N. conference cycle after another. Suddenly, a few people get hired who "know" that it's not worth it to codify another generation of human rights; what everyone should now be doing is litigating in domestic courts.

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

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

C. The Project: Making New Thinking and Making It Known

Looking back on my own extra-vernacular efforts, it is
hard to know whether to foreground the development of “new
thinking” in the style of the first section of this essay, or the
effort to make this criticism known as a project in a world of
commitments, aversions, affiliations, and wills to power in the
style of the second section. One could probably tell the story
either way. In my own mind, it probably had phases in which I
would have described it more as one or the other. What I can
remember is that as I began teaching and writing, I tried to set
aside the discipline’s normal assumptions about what interna-
tional law is and is for: that international law is a set of broadly
universal norms governing relations among states rather than
the professional practices and culture of particular people in
specific contexts, that the discipline’s goal is to strengthen “in-
ternational law” against the forces of “politics” or “national in-
terest,” that international law is basically a good thing and that
there should be more of it, that the discipline’s central intel-
lectual challenge will always and forever be to square respect
for sovereign autonomy with a governable international com-

munity, that international lawyers function best as technocratic
handmaiden to statecraft.

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

I want neither to underestimate the counterintuitive quality of the thought experiment nor to propose it as a recipe. To return to the metaphor of religious identification, it is hard to imagine what it could mean to be a Protestant and be unengaged by issues that differentiate high and low. One might well be uncertain where one comes down, even if of two minds about the matter, but to set these issues aside seems in some way to set Protestantism aside. So also for international law. I nevertheless thought it might be helpful to perform the posture, in teaching, writing, and in practice, of being an international lawyer, but not being at all preoccupied with the field’s classic debates or doctrinal choices. Rather than inaugurate a sect within the field by presenting my own modest doctrinal or institutional readjustments as signs of a broad disciplinary renewal, such as by vowing to end the field’s attachments to “sovereign autonomy” or “legal form,” I experimented with escaping the oscillation between the “high” and “low” arguments. I tried to do this by running the arguments insistently and eagerly in both directions at once and by placing in the foreground the professional ambivalence in my audience. Often this produced only befuddlement, I must admit. More critical friends scoffed at my insistence on the posture of being in the field, rather than in some larger, longer, more fashionable, and erudite tradition of criticism. Many in the field thought it an oddly unhelpful performance, strangely uninterested in responding to the pressing needs for reform and disciplinary engagement. But sometimes it did work, as far as I could tell, to open up the idea of a space for collaboration in the field that might at least promise to look beyond the discipline’s conventional preoccupations.

If I think back to this moment in the 1980s, there was always a question about the “politics” of the project. We need to
remember a time when Reagan had momentum, and Carter did not, when the left, both in and outside the academy seemed split between a tired and assimilated establishment and a world of sectarian identity projects, and when the effort to purge critical legal studies from the American legal academy was in full and successful swing. It was strategy, it was personality, it was commitment. But I felt far more comfortable launching a project for “new thinking” than one for a revitalized critical practice in the field. At the level of strategy, I thought there would be more young people intellectually open to the idea that the existing disciplinary lexicon was preposterous than to the idea that it was evil or status quo. The earnest projects of the identitarian left seemed as rooted in a misguided disciplinary vocabulary as those of their adversaries. This may all be different now, when the energy in the field lies with a resurgent and Clinton-inspired center-left. Perhaps an extra-vernacular project would be more successful now presenting itself as a more critical and potent outsider left. People in the field, the mainstream, the identity mavens, all have metabolized the idea that their vocabulary is preposterous, but not that it is less useful than it claims or that it might even be counterproductive. In the 1980s, the reverse seemed more the case; people had gotten used to the idea that the field was useless, but they did not think it was preposterous.

In any event, I focused on the plasticity and hyperbole of the vocabulary, even though that put off possible allies interested in more immediate political payoff. I should probably acknowledge that while left-liberal states-people everywhere could probably be helped in their practice by better international law arguments, doctrines, and institutions, this has never been my first concern. I have never been opposed to trying to offer some, but in my experience there are always lots of people stepping into that breach. We do not need to worry that the left-liberal establishment won’t be able to think up good arguments for its hold, however tenuous, on state power. I think we are more in need of in-reach than outreach, of looking at our discipline as a practice and intellectual project with its own will to power and cultural contribution. Like any good dose of history, such an effort might help us avoid mistaking ideology for insight.

That the discipline remained apologetic for current distributions of wealth and legitimacy, that it has mistaken the insti-
tutions of governance for an international "community," has entrenched the cultural and political divisions between North and South while seeking to dissolve them into a universal humanism, which has done more to reinforce the authority of sovereign powers than to limit them and to legitimate war rather than restrain it, all of this seemed linked to the effort by international lawyers to think primarily in structural or constitutional terms (too much unilateralism, bad voting rules, too much sovereign autonomy, and not enough international community) and to interpret transformations in the "international system" (multipolarity, decolonization, and the atomic age) as calling for a constitutional correction (more multilateralism, consensus voting, the end of positivism, rejection of sovereignty). My intuition has been that broad constitutional changes, changes in emphasis among the discipline's many ambivalent and contradictory ideas about how international governance ought to be achieved, often seem like ways of not seeing, or of apologizing for other enduring injustices and systemic incapacities.

For example, a lot of the discipline's attention has been devoted to issues of global wealth and poverty, and numerous proposals for new international economic norms, programs, and institutions have been advanced to promote global wealth redistribution. Yet it seems obvious to me that the most important work of perpetuating and normalizing the astonishing distributional inequities of our current world is done by the spatial division of the world's political cultures and economies into local and national units and by the conceptual separation of a political public law that operates nationally from an apolitical private law which operates internationally. We now think it obvious that poverty is a local problem, while wealthy people live more and more globally. But spatial and conceptual issues of this type are simply off the map of the discipline's concerns. A world of national economies and political cultures remains a starting point, however much the entire field has tilted at the windmill of diminishing sovereignty and rendering territorial boundaries more porous. International law, for all its hostility to sovereignty, is more implicated in its reproduction than in its limitation. These spatial and conceptual boundaries are largely legal productions. I have spent most of my own disciplinary energy trying to figure out how the repeating practice

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of disciplinary renewal might entrench rather than eliminate ideas like this.

Unfortunately, I don’t think we yet have a very good idea about how this happens or how to avoid it. Why are spatial and conceptual ideas of this sort off the agenda when people speak of little else than rearranging space, “globalizing,” ending sovereignty, and so forth? It is a real puzzle. It has something to do with colonialism, something to do with the distinction between public and private law, something to do with attitudes about cultural difference and geography, something to do with images of the natural differences between law and politics. It seems bound up with the difference between procedural and substantive matters in national and international law. We could perhaps date it—to nineteenth-century territorialization? To colonial expansion in the seventeenth century? To twentieth-century efforts to unbundle sovereignty, rights, and personality, if only ever partially? It has something to do with the ideology of “development” and “participation,” and assumptions about what is a fact and what is more plastic, political, or legal. There are some good projects picking away at these problems, but this whole line of inquiry remains speculative, partial, and groping.

Perhaps as a consequence of the very preliminary nature of the inquiry, this line of work has not produced anything like a program for action or disciplinary renewal. I do not think that I have, or to my knowledge anyone else has, discovered a list of methodological errors or political mistakes on the order of “too much sovereignty,” or “too much formalism,” or “not enough political science,” or “too few women,” or “too few third world nationals” at the drawing board, which cleanly account for the difficulties I am worried about and whose elimination or reversal, therefore, could easily inspire a program of action. It seems more troubling to me that reforms which shift among the various doctrinal and institutional emphases or among the various schools of thought in the field are generally not responsive to these difficulties. As a result, I am thrown back on the idea that we need to keep thinking before we rush to reform the field along any general line. This is not for any philosophical reason—and certainly not because I am not interested in reform—but because I have not yet seen any critical work which has produced so clean a line or direction.
When I started out in international law with this sort of critical impulse in the early 1980s, I was more or less on my own in the field. There were lots of generous folks among the senior figures who were receptive to a young person with energy. But my most important intellectual and professional support came from people who were pursuing similar projects in other fields. As I was trying to figure out how to think about international law, my most helpful intellectual interlocutors were mentors associated with critical legal studies who were completely outside the field, as well as my age cohort of assistant professors who were pursuing projects of criticism and renewal in other fields—contract law, trade law, family law. We read things together, tried to understand the lines of critique that had been developed around the critical legal studies movement and the intellectual work of people in other fields whom we had heard had a critical impulse which might turn out to be similar to our own. We differed in our attitudes about criticism—some of us were more interested in reform than others and some more convinced of the plausibility of our own field’s available modes of analysis than others. As I remember it, none of us were sure how our own particular critical energy related to modes of criticism already present in our fields—would we end up uncovering a recipe for reform or would our criticism put the field’s reform terrain under question in some broader way? We weren’t sure, but some of us were more optimistic one way or the other.

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

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

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

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

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

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

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

Once the group came to be recognized as a group and
had received critical notice, my relation with new students and
colleagues shifted. At least some students came to my courses
already thinking of me as somehow different or critical or just
“new.” For some students, of course, this is seductive,
although sometimes this enthusiasm substitutes for any real
engagement, and the student ends up thinking one stands for
whatever he or she came in thinking of as “critical.” More
often, this sort of identification makes students wary, suspi-
cious that everything one says is part of a “line,” that they are
not really learning the field, that the teacher will not validate
a student’s own reform enthusiasm. I shifted my own teaching
quite starkly to read classic materials in the field as carefully as
possible, hoping to make it unmistakable that we were learn-
ing and exploring the consciousness of mainstream interna-
tional law. I began taking numerous votes in the class and
teaching from the sensibility of the class majority, foreground-
ing their own ambivalences. Critical recognition and reaction
also made students who were skeptical about the field easier to
recognize and engage.
As I became known to embody something "new," opportunities to speak and write increased. I began looking for younger colleagues and students who seemed to respond to the vague idea that "we could do something different," could go beyond the range of particular reforms now on display. There was a sort of implicit deal in my relations with these people as I came to know them: I would tell them what I knew about existing modes of critique in the field, and they would share their own intuitions about how these critiques might be extended or where we might look for promising critical or reform ideas. Students or colleagues in other places often had an idea about some new vein of theoretical material that could be mined, or brought to the discussion a new political or disciplinary preoccupation.

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

Perhaps the largest group of people who came into the milieu to express dissatisfaction with international law did so to express or understand their own experience as outsiders to the mainstream of the profession. Many of these people were intellectuals from the Third World who were far more identified with international law than American students—it was already a real profession for them, as well as an important identity in their own local establishment. At the same time, many were also frustrated by the difficulty "third world voices" had in articulating criticisms that did not fold easily back into the
standard modes of modest reform. They were sometimes will- ing to work on developing new ways of understanding and criti zing the tradition from the inside, while encouraging the broader group to focus more attention on the exclusions and biases of the international law tradition.

Some foreign students were more interested in the ways their own local legal cultures were understood, both at home and abroad, through the disciplines of comparative law or area studies. There were often students from the Middle East, Asia, or Latin America who were frustrated by the available traditions of area studies in the United States. I began to learn from them about the similarities and differences between the disciplinary limitations of comparative and international law.

Others were women frustrated by the limitations of a "women's rights" approach in expressing their feminism within international law. The now expanding milieu was appealing, I think, to people who came with critical projects of their own and who were open to the idea that the humanitarian promises and practices of mainstream international law might not exhaust their critical or progressive ambitions. And some people were attracted to the milieu simply because it seemed like something was happening, like there was a buzz, perhaps like something remembered or imagined to have been part of earlier moments of intellectual innovation and change in law associated with critical legal studies, or the early moments of the law and society movement. We picked up the occasional person interested in legal theory with no prior interest in international law. Some people frustrated with the normalization of critical race theory, or hoping to launch a more active network of critical legal scholars interested in Latina/Latino affairs or interested in generating a queer theory alternative to the mainstream gay and lesbian rights movement, came to meetings and began influencing the group.

In short, the group was anything but homogenous. There were deep national differences—the East Asian types influenced by post-colonial theory, the American human-rights types straddling the line between reform and critique, and the African scholars interested in renewing third world legal studies, influenced by third world nationalist and socialist traditions of criticism. The particular political projects of participants also differed, from becoming an organic third world intellectual to doing something concrete to improve the
situation of women in development, to opposing neo-liberal trade policy in the name of expanded labor rights. There were all the classic tensions which often erupt in multinational intellectual endeavors, between African men and East Asian women, between Latin Americans and Asians, and so forth. And, of course, all of this was overlaid by numerous interpersonal struggles for recognition, affiliation, domination of students by teachers and teachers by students, of competition among mentees and mentors. Sometimes, these different projects could be kept in conversation, but sometimes they could not. People got discouraged and angry, or felt betrayed or used, and they left, carrying on their projects elsewhere or simply becoming demobilized.

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

By the mid-1990s, I found myself less the apostle of all things new than a positioned polemicist. I was associated with a particular intellectual project, a self-conscious effort to build a collective intellectual project of disciplinary criticism and renewal which I called, I hesitate to say, “New Approaches to International Law” (NAIDL). I called it “new approaches” to suggest a big tent, interested in the widest range of innovative energy without predetermining where it would lead. I also wanted to differentiate the group from “critical legal studies,” which had accumulated a lot of baggage by then. For many young scholars and students, “critical legal studies” seemed at once passé, dangerous, too politicized, too much associated with a “line” of some sort. The NAIDL was not a movement of ideas or the working out of a general disciplinary problem, but a specific effort by a group of legal academics in particular institutions to encourage one another’s work, hold conferences, write more and differently, get to know people they would not otherwise have met, experiment with new methods and ideas. We did not start with an insight or a disciplinary program, although we all came to think about international law as a legal intelligentsia with its own cultural politics and will to power rather than as a pragmatic handmaiden to governance.

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

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

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

Intellectually, the project was always rather diffuse. I was interested in public international law; others were interested in women's rights, nationalism, social theory, or colonial history. The NAIL offered an opportunity for cross training—for those interested in feminism to learn about the economics of development policy and vice versa. For me, the most surprising, pleasurable, ambitious, and even crazy aspect of the NAIL was the range of intellectual themes and disciplinary subjects brought to the party at various points. And, of course, each constituency had to struggle with its own divisions and differences. Early on, quite deep differences emerged between the Europeans and Americans in the group—the Europeans were more devoted to the field of international law and felt more rigorous in their theoretical thinking; the Americans were more interdisciplinary and more interested in a sprawling network of questions related to constituency groups and identity politics. Those most interested in public international law were often European and male, preoccupied with historical studies and philosophical inquiry, although some were women frustrated with the tradition of human rights activism or developing a broader feminist critique of the field as a whole. There was a shared project: escaping the hypocritical and utopian lethargy of the pre-1989 field or the neo-liberal triumphalism of the post-Cold War discipline. But there was no shared set of ideas, commitments, or critiques.
Although some of us were friends, there were lots of people in the group who did not particularly get on. Many of the public international law scholars who worked with the NAIL had taken my course at Harvard or elsewhere, but many had not. And it was not all public international lawyers by any means. Those most interested in international economic law were more technocratic in orientation and interested in trade liberalization and harmonization, often in the European Union context. Some were focused on strengthening public policy capacity in particular areas: labor standards, environmental protection, and immigration. There were specialists in media or telecom, scholars interested in economic development, in private law theory, in comparative law. Many of these were people who had no pre-existing interest in international law per se—they came to the group through study of local government, welfare policy, critical legal studies, or because they were friends with someone or had heard it was a fun scene. Linking public and private law in a common project meant that lots of public international law people had to learn about international economic law and vice versa. Private law people had to get over their phobia of politics, and public law people had to get over their policy, math, and economics phobias. There were also a number of people who were not particularly interested in either international law or trade policy and yet were focused on identity issues—third world nationalists, post-identity diasporic intellectuals, third world nationals frustrated by the limitations of the human rights establishment, activists and literary theorists, queer theorists, not to mention men and women. A great deal of what went on under the heading of “New Approaches to International Law” was simply the working out of differences among all these constituencies.

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

For example, in the early years after the end of the Cold War, people interested in international affairs at my own institution often seemed polarized, with “NAIL” somehow implicated in broad divisions—between those who were generally optimistic about American hegemony and the emerging neoliberal consensus among international economic and humanitarian institutions and those who were more pessimistic about America’s role in the world; between those who embraced political science and those more comfortable with cultural studies or economics; between those committed to liberal universalism and those more interested in the Third World or in cultural identity; and even between those who were women and those who were men. To be sure, all of these are important differences, just as the difference between those who thought judges overstated the determinacy of law and those who thought critics overstated its indeterminacy was once a marker for the difference between mainstream and critical postures in the American legal academy. But, one can easily overstate differences of this sort, just as one can overstate the difference within the discipline between criticism and reform. There was always far more political and methodological agreement, crossover, and confusion than such a neat polarization suggests. Indeed, these differences initially had little to do with the preoccupations of the NAIL. And yet, as the foreign and American student body became more polarized along these lines, I found myself cast in opposition to neo-liberal hegemony, while my colleagues in the international law field who seemed outside, or hostile to, the NAIL efforts were understood to be far more optimistic defenders of American neoliberal hegemony than they actually were. After some time, people drawn to the project by this set of polarized images went on to place the critique of neo-liberal economic and political internationalism squarely on the group’s agenda.

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

I think the effort to see activities like the NAIL as cults is quite similar to the tendency by mainstream eclectics to think of “schools of thought” in terms of adherence to a set of propositions or methodologies or by secular people to speak about religious groups as all “believing” in this or that. If your own project is to insist on the ecumenical, pluralistic, and rational openness of the mainstream or establishment, then it will be difficult to think of oneself as part of a “school,” “group,” or “religion,” and easy to think of those who are setting aside the mainstream preoccupations as unencumbered by differences of opinion or commitments to pluralism and rationality. In my own experience, however, it is just not so. Not for Protestantism, not for international law, and not for the NAIL. Indeed, in my own experience, the disciplining effects of mainstream insistence on preserving broad unresolvable debates, while inflating modest doctrinal or institutional differences into matters of deep principle, are themselves intensely sectarian.

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

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

My guess is that the basis for this feeling was more a sensibility than a set of ideas. One could probably name a sort of canon of works which many people in the NAIL would have heard about or read: Koskenniemi’s From Apology to Utopia, Berman’s piece on international law and cultural modernism, my own Spring Break, Lama Abu-Odeh’s piece on the veil, Duncan Kennedy’s Hale and Foucault or Critique of Adjudication, Knop’s Re/statement, Anghie’s piece on Vitoria and colonialism, Danielsen and Engle’s After Identity.²⁵ There were un-

²⁵. See From Apology to Utopia, supra note 1, at 14; David Kennedy, Spring Break, 63 Tex. L. Rev. 1377 (1985); Lama Abu-Odeh, Post-Colonial Fem-
doubtedly others as well, but I am not sure very many people in the group could state very clearly the arguments of even the “canonical” texts. Nevertheless, we did develop a group vocabulary, which changed over time. For the last NAIL conference, I wrote down a list of slogans in an effort to capture some of that vocabulary, to remember what words we had used to generate the feeling of being outside the disciplinary vernacular. When I read them out, there was laughter at their routinization into slogans and some cheering at favorite propositions. Here is the list, many items of which are in tension with one another.

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

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• Ambivalence rules: perilous, pervasive, personal, political ambivalence

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

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

But as I have said, I don’t think about “new thinking” as a set of methods, ideas, or propositions. For me, new thinking is a performance. I imagine that when dancers’ choreographers think about their work, it must be interesting to look at videos, to study choreographic notation, and to find recognition in empathetic reviews, but dance remains somehow inexorably a performance. It happened, and people who came, who danced, who choreographed, and who played, had an experience which would otherwise not have been available to them. When I think of the NAIL, I think of it as a performance art-
work. There was a sensibility, there were moments of intellectual engagement when people felt the presence of innovation, when the bonds of conventional wisdom relaxed, when the discipline suddenly looked altogether different. Some people wrote things up, and taught things, and did things in the world afterwards, but to my mind these are largely dead things. At the “Fin de NAIL” celebration, many participants knelt down to hammer a finishing nail into a charred and fur bedecked chunk of wood that Günter Frankenberg had brought along. It was a disturbing ritual, and the relic remains an arresting mark of our endeavor together.

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

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

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

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

The sensibility I have in mind can also shed the skin of these forms—can move to another institutional frame and intellectual question. It is worth celebrating moments when this sort of thing comes together, and I am very proud of all that went on in the NAIL in this last incarnation. But I do not think we got to the end of the effort to figure out what the discipline should do. I can say that on our best nights, we performed what the discipline can be. There will be other performances, projects, parties. Perhaps some new NAIL will emerge. If I hear of anything, I will be sure to let you know and hope to see you there. If you find yourself with an exciting project of criticism and innovation or if you see the light on far off down some road and think something great might be going on, call me. I've got my dancing shoes polished, and I'd love to come along.